Volume I.

75209

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 19[illegible]

No. [illegible]534

STANDARD SANITARY MANUFACTURING COMPANY ET AL., APPELLANTS,

vs.

THE UNITED STATES OF AMERICA.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF MARYLAND.

[illegible]

FILED FEBRUARY 18, 1913.

(73,064)

UNITED STATES OF AMERICA

v.

STANDARD SANITARY MANUFACTURING COMPANY AND OTHERS.

RECORD—VOLUME I.

TESTIMONY OF WITNESSES FOR THE PETITIONER.

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1

IN THE UNITED STATES CIRCUIT COURT, DISTRICT OF MARYLAND.

No. 17.

UNITED STATES OF AMERICA,
Petitioner,

vs.

STANDARD SANITARY MANUFACTURING COMPANY AND OTHERS, 2
Defendants.

Decree Appointing Examiner, Oct. 22, 1910.

It appearing that the above entitled cause is at issue on the petition and the answers and replication heretofore filed, now, therefore, upon motion of counsel for the petitioner, and by consent of the parties,

IT IS ORDERED: That Lindsay C. Spencer of the City of Baltimore, be and he hereby is designated and appointed as special examiner to take and report to the Court the evidence adduced or offered by the petitioner and the defendants respectively, with full authority as such special examiner according to the rules and practice in such case made and provided: 3

That said examiner give notice by mail to counsel for the respective parties, of his appointment herein, and of the time and place when and where he will attend for the purpose of hearing such testimony as may be adduced; and that notice be given by the respective counsel or solicitors to the opposing counsel or solicitors, or parties, by mail or personally, of the time and place of the examination, for such reasonable time as the examiner may fix or order in each case. 4

That said examiner may, when necessary or convenient for the respective parties, continue said hearings from time to time, by order made and entered during any regularly appointed or noted hearing had thereunder:

That said examiner may, upon application of any of

the parties, hold such hearings, and receive testimony in behalf of any party, at such times and such places without the District of Maryland as he may designate and appoint, by giving special notice to the respective parties or their solicitors, or by order made and entered at any regularly appointed or noted hearing had hereunder; notice of such time and place of hearing also to be given by the respective counsel or solicitors to the opposing counsel or solicitors, or parties, as provided by this order:

That said examiner is hereby given authority to employ such stenographers as the parties may agree upon to assist in the taking of said testimony from time to time as may be necessary:

That all testimony adduced pursuant hereto may be taken in the usual manner, under oath; and when completed, be reported by said examiner, together with all and several the proceedings had before him, to this Court, and filed with the clerk thereof, in accordance with the rules and practice of this Court:

That the respective parties may from time to time agree as to the time and place of taking proof outside of the District of Maryland, and may, in case the examiner herein appointed is unable by reason of illness or other cause to attend at the time agreed upon, by such agreement select an examiner specially for such examination, whereupon such examiner so selected shall as to such proof and the taking and reporting thereof, have all the authority, powers and duties herein given generally to said Lindsay C. Spencer, examiner, and the said examiner, shall act as such examiner outside of said District of Maryland except where there is an agreement among the parties as in the cases provided in this paragraph.

By the Court:

JOHN C. ROSE,
Judge.

Dated this 22nd day of October, 1910.

We assent to the foregoing order.

W. L. MARBURY,
Of Counsel for Defts.

EDWIN P. GROSVENOR,
Spec. Ass't to Att'y Genl.

JOHN PHILIP HILL,
United States Attorney.

IN THE CIRCUIT COURT OF THE UNITED STATES 1

FOR THE DISTRICT OF MARYLAND.

THE UNITED STATES OF AMERICA,
Petitioner,

vs.

STANDARD SANITARY MANUFACTURING COMPANY, *et al.*,
Defendants.

2 Evidence for the Petitioner, taken before me, Lindsay C. Spencer, Special Examiner by appointment of the Circuit Court for said District, under the 67th General Equity Rule, as amended, after due notice to the counsel for the respective parties, in the Federal Building in Pittsburg, Pennsylvania, on the thirty-first day of October, 1910, at 10:30 a. m., pursuant to notice duly given.

COUNSEL PRESENT:

EDWIN P. GROSVENOR, Esq., Special Assistant to the Attorney-General, on behalf of the Petitioner.

3 HERBERT NOBLE, Esq.,
HARTWELL P. HEATH, Esq.,
on behalf of the Defendants.

EDWIN L. WAYMAN, a witness of competent age, produced on behalf of the petitioner, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY Mr. GROSVENOR:

Q. Mr. Wayman, what is your business?

A. I am engaged in the sanitary enameled iron ware industry. 4

Q. How long have you been engaged in that business?

A. About four years.

Q. Where did you start?

THE WITNESS: In this business?

Mr. GROSVENOR: Yes.

A. With the Seamless Steel Bathtub Company, in Detroit Michigan.

1 Q. How long were you there?

A. Until about the middle of last year.

Q. Please state the date? A. 1909.

Q. What month? A. July, 1909.

Q. Then where did you go? A. I came to Pittsburg.

Q. In what capacity?

A. As Commissioner of the Sanitary Enameled Ware Association.

Q. What became of the company with which you were associated in Detroit?

A. The company is not operating, and the property is
2 simply lying there. The affairs of the company have never been settled up. It is inoperative, and I don't know what may become of it.

Q. Have you made a study of the sanitary enameled iron ware business?

A. Yes, I have, principally with reference to the distribution of the goods.

Q. You are familiar with the manufacturers engaged in that business? A. Yes.

Q. You are familiar with the conditions of the business?

A. Yes.

3 Q. That is to say, with respect to the sales of the business?

A. Yes, and somewhat in respect to the manufacturing.

Q. On page 9 of the petition of the Government are stated the names of the 16 corporation defendants; are all those defendants engaged in the manufacture and sale of sanitary enameled iron ware? A. Yes.

Q. Other than the names mentioned on that page, what manufacturers of sanitary enameled iron ware are there in the United States?

A. J. M. Kohler Sons Company, Sheboygan, Wisconsin; the Iron City Sanitary Manufacturing Company, Pittsburg;
4 the Blairsville Enameled Ware Company, Blairsville, Pennsylvania; the Clymer Manufacturing Company, Indiana, Pennsylvania; Louis Lipp Company, of Cincinnati, Ohio; Washington Iron Works, Los Angeles; Rundel Manufacturing Company, Milwaukee; the Jacob Vollrath Sons Company, Sheboygan, Wisconsin; the Jones Holloware Company of Baltimore, and I think there is a small concern in Columbus, Ohio; I don't know the name; there is a man connected with it, I think, by the name of Pheil.

Q. The names you have given, as far as you know, include the names of all manufacturers of sanitary enameled iron ware products throughout the United States? 1

A. To the best of my recollection, yes.

Q. Will you state what are the articles known in the trade as sanitary enameled iron ware?

A. Bathtubs, receptors, pools, infants' baths, lavatories, drinking fountains, roll rim sinks and combinations, that is by combinations I mean various combinations of drainboards and end pieces to make different styles of sinks, slop sinks, sink backs and ends, drain boards, wash sinks, sink and tray combinations, laundry trays, closet bowls, urinals, flat rim sinks, square and round corner kitchen sinks, half circle sinks, wash bowls, trap standards, grease traps, closet tanks—that covers the principal items in the business. 2

Q. That is of sanitary enameled iron ware? A. Yes, sir.

Q. Now, of the articles you have mentioned, which is the most important in the trade?

THE WITNESS: In what respect?

Q. I will put it this way: What is the total annual output in value of sanitary enameled iron ware in the United States? 3

A. Any figure I might give you would be strictly a guess. I would say approximately not more than $14,000,000.

MR. NOBLE: I object to the witness making guesses and move that the answer as to the guess be stricken from the record.

BY MR. GROSVENOR:

Q. You say you have made a study of this enameled iron ware business? A. Yes, sir. 4

Q. You are at present the ostensible licensor of these 16 manufacturers, the defendants, the corporation defendants in this case?

MR. NOBLE: I object to the question on the ground that the use of the word "ostensible" contains a suggestion of a conclusion alleged in the bill and not an inquiry as to any question of fact.

1 By Mr. Grosvenor:

Q. I will change the question: You are at present the licensor of these 16 manufacturers, the corporation defendants in this case? A. Yes, sir.

Q. As licensor you are familiar with the extent of their output? A. No.

Q. During the four years that you have been in this business you have become, as you say, familiar with the names of all the manufacturers engaged therein? A. Yes.

Q. You have had occasion, have you not, to ascertain the names of those manufacturers?

2 A. I don't know how to answer that question. Can you make what you mean any plainer?

Q. Yes, this is what I mean: You have had occasion to find out the names of all those engaged in the business; in other words, you have tried to find out all those who are engaged in the business for purposes of your own information?

A. Well, not all of them, no. I know those firms are in the business.

Q. You say your estimate is that the total output of sanitary enameled iron ware in the United States is about

3 $14,000,000?

Mr. Noble: Note the same objection which was raised before.

Mr. Grosvenor: Answer the question, please.

A. Approximately, yes.

Q. Of this total annual output which, in the trade, is the most important article?

The Witness: I don't understand that question.

Mr. Grosvenor: It seems to me it is a very simple one.

4 The Witness: Are you talking of classes of goods, or what?

Mr. Grosvenor: I asked you which article in the trade is the most important article?

A. The bathtub, with respect to size and value, I should say.

Q. Then, in value, the number of bathtubs sold in the United States aggregate more than the value of any of these other articles which you have specified? A. No.

Q. I am only trying to get at the facts, and you will save a lot of time by answering the questions as briefly as possible. Now, I want to know— 1

Mr. NOBLE: The witness did not understand that last question.

Mr. GROSVENOR: The witness is very intelligent.

Mr. NOBLE: It is evident that the witness did not understand the question, and if counsel has put a question which the witness did not understand, it seems to me the witness has a right to ask what is meant, and I object to any suggestion to the contrary. 2

Q. What did you say aggregates more in value than the bathtub—that is, the total output?

A. Well, I would say all the other articles combined would equal more in value than the bathtubs.

Q. But the bathtub itself aggregates more in value than any one of the others? A. Yes, as a class.

Q. That is what I wanted. Next to the bathtub, as a class, which in value aggregates more than any other article? Is it not lavatories? A. I should say, yes.

Q. "Lavatory" is the trade term for what ordinary people call wash bowls? A. Yes, or wash stands. 3

Q. That is the modern form of the wash bowl fixed to the wall, with the fixtures attached? A. Yes.

Q. The most important article is bathtubs, and the next you say is lavatories? A. Yes.

Q. By which we mean wash bowls? A. Yes.

Q. The next is kitchen sinks, is it not—that is, all kinds of sinks?

THE WITNESS: You mean all kinds of sinks?

Mr. GROSVENOR: Yes.

A. I should say, yes. 4

Q. After the kitchen sinks would you say slop sinks?

A. No, I couldn't say.

Q. Laundry trays? A. I couldn't say.

Q. Both of the last mentioned articles have an extensive sale throughout the United States, have they not?

A. More or less limited in comparison with the others. The first three we mentioned stand out more prominently

1 than the rest. As far as the others are concerned I couldn't say what proportion are manufactured or sold.

Q. When you became Commissioner of the Sanitary Enameled Ware Association, how many members of the association were there?

A. I cannot recall the exact number, but they were not all members whose names appear in that list there (indicating).

Q. When did the Sanitary Enameled Ware Association disband? A. June 1.

Q. That is June 1, 1910? A. 1910.

2 Q. Will you look at this list which I show you and state whether or not those firms were members of that association?

A. All with the exception of the Kerner Manufacturing Company of Pittsburg.

Mr. GROSVENOR: I offer, then, in evidence, as "Petitioner's Exhibit No. 1," the list of members and officers of the Sanitary Enameled Ware Association, which the witness has stated disbanded on June 1, 1910, as they stood as of that date.

Paper referred to was then marked and filed as
3 "Petitioner's Exhibit No. 1."

Q. Will you please look at this list and state which of the corporations named on this page entered into licensing arrangements with you on or about May, 1910?

A. The Barnes Manufacturing Company, the Colwell Lead Company, the Day-Ward Company, the Humphryes Manufacturing Company, the J. L. Mott Iron Works, McVay & Walker, McCrum-Howell Company, the National Sanitary Manufacturing Company, Standard Sanitary Manufacturing Company, Union Sanitary Manufacturing Company, United States Sanitary Manufacturing Company,
4 L. Wolff Manufacturing Company, A. Weiskittel & Sons, Wheeling Enameled Iron Company. The Kerner Manufacturing Company, whose name has been inserted on this list, has also executed a license agreement.

Q. Did you give the name of the Cahill Iron Works?

A. No.

Q. Did they enter into an arrangement with you?

A. Not at the time you mentioned.

Q. When? A. About June.

Q. June, 1910? 1

A. I think the execution of the license agreement was made July 6.

Q. Mr. Wayman, have you produced at this hearing the papers which you were subpœnaed to produce?

A. Most of them, all I had time to get together.

Q. Will you please let me have them?

A. Here they are, sir.

Q. The subpœna calls first for the originals of which copies are made exhibits, numbered 1, 2, 3, 4, 5, 6, 11 and 12 respectively, attached to the petition of the complainant. Have you produced these exhibits? A. Yes. 2

Q. I show you a resolution in handwriting, dated March 30, 1910, and ask you if you will state the circumstances under which that resolution was executed?

A. That is Exhibit 1 of the petition. This resolution was entered into at a meeting held at the Hotel Astor in New York City. The first paragraph was the result—

Mr. GROSVENOR: Strike that out. You are giving me your conclusions, now.

Mr. NOBLE: Don't strike anything out. I object to counsel instructing the witness. 3

Q. I will change the question: Will you state whether you were present at the meeting on March 30, 1910, at which this resolution was signed? A. Yes.

Q. Did you see these signatures attached to this resolution? A. I think so, yes.

Q. Where was the meeting?

A. The Hotel Astor, New York City.

Mr. GROSVENOR: I offer the resolution referred to as "Petitioner's Exhibit No. 2," and I will read it.

Paper referred to was then filed and marked "Petitioner's Exhibit No. 2." 4

Mr. GROSVENOR (reading): "March 30, 1910. Resolved, That the matter of license agreement and resale agreement be referred to a special committee of five (5); said committee to be elected at this meeting and to be known as the price and schedule committee, which committee shall be elected directly, should the motion to adopt this resolution prevail.

"This committee shall interview the various manufac-

turers, obtaining their consent as evidenced by their signatures to the above-mentioned agreements. And when the consent of 85 per cent. of the production is had, the agreements shall become binding and effective.

"The commissioner is authorized to levy a special assessment equal to the amount of one quarter's dues as now paid into the association. The proceeds of said special assessment to be used for the purpose of defraying the necessary expenses incurred in carrying into effect the object for which this convention was called.

"The undersigned agree to the above conditions and in so appending their signatures hereby agree to give their prompt cooperation to the matter in question.

"Witness their hands and seals of the parties hereto:

"The Cahill Iron Works,
Per F. H. Caldwell, Pres.,
Per E. L. Wayman."

Q. You signed his name? A. Yes.

Q. Were you duly authorized to do so?

A. I understood so, but he said not.

Q. He entered into a licensing arrangement with you?

A. Yes, sir.

Q. (Reading): "L. Wolff Manufacturing Company, Herman M. Hoelscher, Secy." Was he present? A. Yes.

Q. (Continuing): "The Day-Ward Company, per A. G. Ward, V. P."; was he present? A. Yes.

Q. (Continuing): "Blairsville Enameled Ware Company, F. D. Cody"; was he present?

A. Yes, it should be Cook.

Q. "A. Weiskittel & Son Company, Anton Weiskittel"; was he present? A. Yes.

Q. "United States Sanitary Manufacturing Company, C. F. Arrott; The McCrum-Howell Company, Howard T. Gates, Secretary; The J. L. Mott Iron Works, E. Hammann (subject to confirmation or revocation by our general manager, John Reid); The Barnes Manufacturing Company, T. R. Barnes, Secretary and General Manager; The Humphryes Manufacturing Company, A. I. Laing; Standard Sanitary Manufacturing Company, Frank J. Torrance, Vice-President." Was Mr. Torrance there? A. Yes.

Q. All these parties whose names appear here were present? A. Yes.

Q. (Continuing): "Union Sanitary Manufacturing Company, by C. E. Gates; Wheeling Enameled Iron Company, by J. E. Wright, President, per E. L. Wayman." You had his authorization to sign that for him? A. Yes. 1

Q. Whose handwriting is that (indicating on Petitioner's Exhibit No. 2)? A. That is mine.

Q. (Continuing): "Clymer Manufacturing Company, W. A. Guthrie, President." Now, I understand this Petitioner's Exhibit No. 2, which I have just offered in evidence, dated March 30, 1910, is of a later date than the exhibit attached to the petition and marked "No. 3"; am I right?

A. Yes. 2

Q. I show you what purports to be a memorandum of agreement, undated, and ask you if that is Exhibit 3 to the petition? A. Yes.

Q. Who drew up this memorandum of agreement?

A. I did.

Q. Did you consult with counsel regarding that? A. No.

Q. What time did you draw this up?

A. On the evening of March 2.

Q. Where did you draw it up? A. In Chicago.

Q. Whose was the first name attached to it?

A. The L. Wolff Manufacturing Company's name.

Q. (Reading): "Memorandum of agreement. We hereby agree to execute with E. L. Wayman of the city of Pittsburg, as licensor, on or before April 15th, 1910, a license agreement for the manufacture of sanitary enameled ware under the following United States Letters patent: 'Various patents covering pneumatic dredgers.' (To be enumerated in detail.)" Had you ascertained, when you drew up this agreement, what patents should be included in the agreement? 3

A. Three of them definitely, the three on which I had options.

Q. Were you considering the inclusion of other patents besides those three? A. Yes. 4

Q. Had you at that time secured an assignment of those patents? Answer Yes or No. A. No.

Q. (Reading): "and such additional patents as may come into his possession, upon the terms, conditions, etc., as hereinafter stated or provided for: 1. The license agreement to cover the following schedules of enameled ware: Schedule 1. Five year guaranteed baths. Schedule 2. Two

1 year guaranteed baths. Schedule 3. All other grades of baths. Schedule 4. Small ware, lavatories, etc., and R. R. sinks." What does "R. R." stand for? A. Roll rim.

Q. (Continuing): "Schedule 5. Flat rim sinks. Schedule 6. Competitive lavatories 552 to 562 inclusive, 565 and 535." How did you happen to be in Chicago at that time?

A. I called a meeting of several of the manufacturers to meet me in Chicago and discuss this proposition.

Q. Who were present at that meeting?

A. There was W. J. Kohler, John B. Murphy—

Q. Was Mr. Kohler in favor of the plan? A. No.

2 Mr. NOBLE: I move that the answer be stricken out, and I object to the question, as no plan has been described.

Q. Was Mr. Kohler in favor of the agreement which you drew up that night?

Mr. NOBLE: I object again. He cannot tell Mr. Kohler's state of mind, and furthermore he stated that the memorandum was not in existence at that time.

Q. Who else were there besides the men you mentioned?

3 A. A. H. Cline, Jr.,

Q. Who is he?

A. Secretary of the United States Sanitary Manufacturing Company.

Q. Of what city? A. Pittsburg.

Q. A defendant in this case? A. Yes, sir.

Q. Who else? A. Francis J. Torrance.

Q. What is he?

A. First vice-president of the Standard Sanitary Manufacturing Company.

Q. Of what city? A. Pittsburg.

4 Q. Who else? A. Mr. McCrum.

Q. Of what firm? A. McCrum-Howell Company.

Q. Of what city? A. New York.

Q. Who else? A. Howard T. Gates.

Q. What company? A. The same company.

Q. With offices in New York? A. Yes, sir.

Q. Any one else?

A. H. M. Hoelscher, Secretary L. Wolff Manufacturing Company, Chicago, Illinois.

Q. Did you draw up this memorandum of agreement before or after the meeting? A. After the meeting. 1

Q. Did you consider with these men the subject matter of this memorandum of agreement. A. Some of it.

Q. You discussed with them the subject of entering into a license arrangement? A. I did.

Q. Was Mr. Kohler in favor of entering into such an arrangement?

Mr. NOBLE: Note the same objection previously stated.

A. No. 2

Q. Did he state that he was opposed to it?

Mr. NOBLE: I object to the form of the question on the ground that it does not call on the witness to state what was said, but calls for a conclusion.

A. Yes.

Q. Did Mr. Murphy state whether or not he was opposed to it? A. Yes.

Q. Did he state that he was opposed to it?

A. Yes—may I correct that?

Mr. GROSVENOR: Just answer Yes or No. 3

THE WITNESS: May I correct my last answer?

Mr. GROSVENOR: Read him the question, please.

Stenographer then read the last question.

THE WITNESS: As I remember he did not express himself.

Q. Mr. Murphy is connected with what company?

A. The J. M. Kohler Sons Company.

Q. Of Sheboygan? A. Yes, the Chicago representative.

Q. Who is president of that company?

A. Mr. Kohler is the president.

Q. Did the other gentlemen whose names you have mentioned as being present at the meeting state whether or not they were in favor of that proposition? 4

Mr. NOBLE: Objected to on the ground that it is already in evidence that the proposition referred to by counsel was not then in existence, the paper not having been written, and also objected to as calling for a conclusion.

1 Mr. GROSVENOR: Read the question, please.

The stenographer then read the last question.

A. Yes.

Q. Did Mr. Torrance participate in the discussion?

A. Yes.

Q. Was he in favor of it? Now, answer right out, Mr. Wayman, you know he was.

Mr. NOBLE: I object to that statement, and I object to counsel trying to badger the witness.

Mr. GROSVENOR: This is a hostile witness.

2 Mr. NOBLE: Well, I object to the badgering of the witness by counsel for the Government.

Mr. GROSVENOR: Just read the question.

The stenographer then read the last question.

A. If satisfactory details could be worked out.

Q. (Reading): "2. The amount of royalty to be as follows: $5 per day per furnace in operation with a rebate of 90 per cent. beginning with the 1st month of the 2nd period and monthly thereafter, if the terms of the license have been complied with.

"3. For each violation of the price regulations of the 3 license agreement we agree to forfeit a sum equal to the amount of the shipment in question, and such other penalties as may be agreed on." After this discussion or conference in Chicago, at which these gentlemen, whose names you have given were present, you say you drew up this agreement? A. I did.

Q. Were these matters incorporated in these various paragraphs of the agreement considered at that conference?

A. No.

Mr. NOBLE: Just one moment. Read the question, please.

4 The stenographer then read the last question.

Q. Did you have any discussion at that meeting as to the schedules to be agreed upon?

A. Yes. Do you refer to the schedules in paragraph 1?

Mr. GROSVENOR: Yes.

THE WITNESS: Yes, we did.

Q. Take up paragraph 2. Was there any discussion as to the amount of royalty to be allowed? A. No.

Q. The rebate in paragraph 2 is stated to be 90 per cent.; is that the rebate that was finally agreed upon in June? A. No. 1

Q. Referring to the third paragraph which I have read, was there any discussion at the conference as to what penalties or forfeitures should be incorporated in the licensing arrangement for failure on the part of the parties to carry out the terms of the contracts? A. I don't remember.

Q. You cannot remember? A. No.

Q. Referring to this paragraph which I have just read, is that provision incorporated in the same language in the license agreement entered into in June? A. No. 2

Q. That paragraph was changed? A. Yes.

Q. (Reading): "The selling prices to the jobbers to be established through the licensor by a price committee appointed by the various manufacturers." Was there any discussion in regard to that? A. I cannot recall.

Q. You say there was or was not? A. I cannot recall.

Q. You have no recollection on the subject? A. No.

Q. The price committee was subsequently appointed as evidenced in Exhibit No. 1 which we have just put in evidence, is that correct? A. Yes.

Q. That was at the meeting of March 30? A. Yes.

Q. Which was subsequent to this memorandum of agreement? A. Yes. 3

Q. Were the parties that were present at this conference in Chicago present at the meeting of March 30?

A. Not all.

Q. Who were not?

A. All with the exception of Mr. Kohler and Mr Murphy.

Q. In other words, Mr. Torrance and Mr. Hoelscher and Mr. Cline were there? A. And Mr. McCrum was not there.

Q. In other words, Mr. Torrance, Mr. Hoelscher and Mr. Cline were present at both the Chicago meeting of March 2d, and New York meeting of March 30? A. Yes. 4

Q. Was Mr. McCrum present at the New York meeting?

A. No.

Q. Was Mr. Gates present at both meetings? A. Yes.

Q. Was this subject matter as to the selling prices to the jobbers to be established through the licensor by a price committee appointed by the various manufacturers discussed at the meeting in New York City of March 30?

A. Yes.

Q. You say you cannot recall whether the subject was discussed at Chicago? A. I cannot recall, no.

Q. (Reading): "5. The resale prices to the jobber, taking into consideration the rebate for observance of buying and selling regulations, shall be figured as follows: High grade goods, 25 per cent. above jobbers' cost. Competition goods, 16 2/3 per cent. above cost." What do you mean by the resale prices to the jobber?

A. The prices at which the manufacturers sold to the jobbers.

Q. No, you don't mean that, do you?

A. That refers to the jobbers' profit.

Q. That refers to the rate at which the jobber should resell the goods to the plumber? A. Yes.

Q. You were considering at the Chicago meeting the resale prices?

A. No, I was considering what the jobber was entitled to as profit.

Q. How could you consider that without discussing the resale price?

A. The question was what the jobber could afford to do business on and make a reasonable profit on.

Q. And your purpose was to arrive at such an arrangement where the jobber could make a reasonable profit?

A. Yes, a reasonable profit.

Q. (Reading): "6. The rebates to jobbers shall be as follows: 10 per cent. payable at end of period for strict observance of agreements, the details of the manner in which the rebates shall be made, to be determined." Was that paragraph of this memorandum or the subject referred to in that paragraph, referred to at the meeting? A. No.

Q. Was it discussed at the New York meeting? A. No.

Q. Did the licensing arrangement finally agree upon the 10 per cent. payable at end of period for strict observance of agreements? A. No.

Q. There was a discussion at this time as to what the rebate should be? A. No.

Q. Not by any one?

THE WITNESS: You mean at the Chicago meeting?

Q. Was there any discussion after this Chicago meeting at which the rebates to jobbers was considered?

THE WITNESS: No—previous to the New York meeting, do you mean? 1

Mr. GROSVENOR: I mean at any time after the Chicago conference?

A. Yes.

Q. I don't understand your answer. Did you say there was or was not discussion as to what these rebates to jobbers should be?

THE WITNESS: After this meeting?

Mr. GROSVENOR: Yes. 2

A. Yes.

Q. There was discussion? A. Yes.

Q. That is, the various men present at the Chicago meeting and the New York meeting discussed these matters? A. No.

Q. Who did?

A. The members of the Commission mentioned in the license agreement, and myself.

Q. And they were the price and schedule committee elected or appointed at the March 30 meeting? A. Yes.

Q. How were they appointed at the March 30 meeting? 3

Mr. NOBLE: Will you read that question?

The stenographer then read the last question.

A. By ballot.

Q. Who were the members of the price and schedule committee appointed at the March 30 meeting?

A. H. M. Hoelscher—do you want the firm names?

Mr. GROSVENOR: Yes, give the companies.

A. (Continuing): H. M. Hoelscher, representing L. Wolff Manufacturing Company, Chicago, Illinois; A. H. Cline, Jr., Secretary United States Sanitary Manufacturing Company. 4

Q. Of what place?

A. Pittsburg. T. R. Barnes, Secretary and General Manager of the Barnes Manufacturing Company of Mansfield, Ohio; Francis J. Torrance, First Vice-President of the Standard Sanitary Manufacturing Company, Pittsburg, Pennsylvania; Howard T. Gates, Secretary McCrum-Howell Company, New York.

1 Q. Who was entitled to vote on this balloting?

A. All present.

Q. Each manufacturer present had one vote? A. Yes.

Q. That is, each manufacturing company present represented had one vote? A. Yes.

Q. Now, getting back to paragraph 6 of Petitioner's Exhibit 3, the subject of rebates to jobbers was considered at a date subsequent to this Chicago meeting by the price and schedule committee? A. Yes.

Q. Were you present at that meeting A. Yes.

Q. Were the resale prices to jobbers considered by the
2 price and schedule committee? A. Yes.

Q. You were present? A. Yes.

Q. And the other members of the committee were present? A. Yes.

Q. Referring to paragraph 4, were the selling prices to the jobbers to be established through the licensor by the price committee appointed by the various manufacturers —were those selling prices considered by the price and schedule committee? A. The general plan was.

Q. The general plan was discussed? A. Yes.

Q. And you and the other members were present?

A. Yes.

3 Q. Did that price and schedule committee also consider matters referred to in paragraph 3, namely, the amount of penalties to be imposed for failure to observe the terms of the license contracts?

A. Yes, although no penalties were arrived at.

Q. I want to ask you a few questions about that last side remark of yours. The licensing arrangement as finally determined upon provided that the manufacturers should pay you $5 a day for each furnace operated. The arrangement also provided that if they observed the terms of the licensing arrangement you should pay them back what per
4 cent.? A. 80 per cent.

Q. Now, look at paragraph 9 of the copy of that license arrangement, which I will subsequently offer in evidence.

THE WITNESS: Are you looking at the last one?

MR. GROSVENOR: I will show you the one which purports to be the licensing arrangement (indicating).

THE WITNESS: Yes, sir.

Q. I show you a paper and ask you whether that is a copy of the licensing contract between the several manufacturers and you which was entered into? Is that a copy in its final form? 1

A. Yes, according to the identification marks there.

Q. I will read paragraph 9: "In case of failure on the part of the Licensee to comply in any particular with the terms of this agreement during any month, the Licensor may withhold any and all unpaid rebates and declare the same forfeited as penalty for such violation and shall at once notify the Licensee to that effect." The agreement as finally provided contained that clause? A. Yes. 2

Q. (Reading again from this memorandum): "7. The length of the rebate periods shall be three months beginning April 15, 1910, with the exception of the first period, which shall end July 1. 8. The license agreement and resale prices shall become effective April 15, and the agreement to be executed between the manufacturers and jobbers shall contain a clause to the effect that all material purchased or on hand previous to the above date shall be sold at the resale prices that may be established." The licensing arrangement did not go into effect April 15? A. No.

Q. What was the date? 3

A. June 6, to the jobbers, and June 1 to the manufacturers.

Q. Now, at that meeting of March 30, in New York City, was not a resolution adopted similar to Exhibit No. 2 attached to the petition? A. Yes.

Mr. GROSVENOR: If I have not already done so, I offer the memorandum agreement now as "Petitioner's Exhibit No. 3."

Paper referred to was then marked and filed as "Petitioner's Exhibit No. 3."

Mr. GROSVENOR: I now offer in evidence, as "Petitioner's Exhibit No. 4" resolution referred to, adopted March 30, it appearing undated. 4

The resolution referred to was then marked and filed as "Petitioner's Exhibit No. 4."

Q. I will ask you, Mr. Wayman, if that is the original copy (indicating)?

A. That is the original copy, but not entered into on March 30.

1 Q. When was it entered into?
A. March 29, and it was undated.
Q. Was there a meeting that day? A. Yes, sir.
Q. Where? A. At the Hotel Astor.
Q. This conference in March, then, lasted two days?
A. Yes, sir.
Q. And the same people were present both days?
A. Not all; no, sir.
Q. Mostly? A. Yes, sir.
Q. And the same matters were discussed both days?
A. Yes, sir.

2 Q. This resolution, filed as "Petitioner's Exhibit No. 4," embodies in some degree the idea contained in the last part of paragraph 8 of the memorandum of agreement, which you say you drew up March 2, does it not?

THE WITNESS: I did not catch the meaning of that, Mr. Grosvenor; will you read the question to me?

The stenographer then read the last question.

A. Yes, sir.

3 Q. (Reading on from the memorandum of agreement, marked "Petitioner's Exhibit No. 3"): "9. The details of contract forms between the manufacturers and the licensor shall be drawn up by the licensor and submitted for approval at the next special meeting to be held in New York City." A. Yes.

Q. Were the details of the contract forms between the manufacturers and licensor discussed at that Chicago meeting?

THE WITNESS: At the Chicago meeting?
Mr. GROSVENOR: Yes.

A. No.

4 Q. They were discussed at the March 30 meeting?
A. Yes.
Q. And at the meeting on March 29?
A. Yes, somewhat.

Q. The next special meeting referred to here in paragraph 9 was the meeting on March 29? A. Yes.

Q. (Reading): "10. The licensor will also submit the same covering agreement between the manufacturers and jobbers." Did you submit at the meeting of March 29 and

30 a contemplated agreement to be entered into between the manufacturers and the jobbers? A. Yes. 1

Q. And the terms of those contracts were discussed at the meetings of March 29 and 30? A. Only in a small way.

Q. (Reading): "11. The following 'preferential discounts' from the selling prices established by the licensor will be allowed the various manufacturers on sales to jobbers only." When was that pencil notation "on sales to jobbers only" incorporated?

A. I am not sure, but I think I put that in some time after some of these manufacturers had signed.

Q. What do you mean by a preferential discount? 2

A. A leeway.

Q. To whom? A. To the jobber.

Q. You mean to the manufacturer, do you not?

A. It might be construed both ways.

Q. Then we come to the schedules and the list of manufacturers enumerated in a column? A. Yes.

Q. Opposite the names of certain manufacturers are certain percentages? A. Yes.

Q. What do you mean by those percentages?

A. For instance, the Union Sanitary Manufacturing Company's price to a jobber on Schedule No. 1 goods would be 5 per cent. below the Standard's. 3

Q. In other words, in this contemplated licensing arrangement which you were to enter into, the licensing contract which you proposed to enter into with the Union Sanitary Manufacturing Company was to allow the Union Sanitary Manufacturing Company to make a 5 per cent. extra discount? A. Yes.

Q. In addition to those allowed the Standard? A. Yes.

Q. In other words, the Union was to be allowed to sell 5 per cent. cheaper to the jobber, is that right? A. Yes.

Q. Then, these percentages indicate the special extra preferentials which the manufacturers were allowed to make to the jobbers? A. Yes. 4

Q. As a matter of fact, the final licensing arrangement contemplated a certain series of discounts which each manufacturer was to allow the jobber? A. Yes, in addition—

Q. Just one minute. These columns of percentages in this memorandum of agreement refer, then, do they not, to the special discounts which these manufacturers were to be allowed to make?

A. In addition to the regular discounts, yes.

Q. What do you mean by the regular discounts?

A. Those printed in the license agreement—those printed in the jobbers' license agreement.

Q. And were the same for all manufacturers? A. Yes.

Q. And these were the special preferentials, because they were the discounts which distinguished the manufacturers from each other? A. Yes.

Q. Looking at that list, the Standard Sanitary Manufacturing Company, the Wolff Company, the United States Sanitary Manufacturing Company, Kohler, Barnes, Cahill and Mott, it was contemplated, should be allowed no preferential? A. Yes.

Q. In other words, their discount to jobbers should be simply the regular discount? A. That is right.

Q. Now, these manufacturers which were to be allowed preferentials were the smaller manufacturers, were they not? A. Yes.

Q. Of the list of manufacturers stated there will you point out those who did not enter into the arrangement?

A. Kohler, Clymer, Blairsville and Iron City.

Q. And the other 15 entered into it? A. Yes.

Q. And in addition to them, what other?

A. The Kerner Company.

Q. You were hoping at that time to enter into licensing arrangements with these four who finally declined?

Mr. NOBLE: I object to counsel asking the witness what he was hoping.

Mr. GROSVENOR: Read the question.

The stenographer then read the last question.

A. Yes.

Q. It was your intention to secure licensing arrangements with those 4, if possible? A. Yes, sir.

Q. Did you write letters to Mr. Kohler urging him to join the licensing arrangement? A. I believe I did.

Q. Did you send telegrams to him? A. Yes.

Q. Did you see him personally? A. Yes.

Q. Did you with Mr. Torrance ever see Mr. Kohler and suggest that he join? A. No.

Q. But you saw him by yourself? A. Yes.

Q. How about the Iron City, did you try to induce them to enter? A. Yes. 1

Q. Did you write to them? A. No.

Q. Did you see them personally? A. Yes.

Q. Who? A. Mr. Kelly.

Q. What is his position?

A. Secretary-treasurer of the Iron City Manufacturing Company.

Q. Now, the Clymer Company, did you endeavor to induce them to enter? A. I believe I did.

Q. You sent them the same circulars which you sent to the other manufacturers at the time this arrangement was 2 being made? A. Yes.

Q. The same circulars as you sent to Kohler and the Blairsville people and all of them? A. Yes, sir.

Q. Did you see the Blairsville people?

A. I sent them circulars.

Q. Who is in charge of that company?

A. Mr. Cook is president. My dealings were with Mr. Shipman, the treasurer.

Q. Did you know of any other manufacturer that entered into licensing arrangements? A. Yes, Kerner.

Q. They entered into one? A. Yes. 3

Q. Were they manufacturing lavatories? A. Yes.

Q. And kitchen sinks?

A. Yes—I would not be positive of that.

Q. How many furnaces do they have? A. Three, I think.

Q. How many has the Standard Sanitary Manufacturing Company? A. Eighty-nine.

Q. Kerner is a small factor in the trade? A. Yes.

Q. But you subsequently acquired them? A. Yes.

Mr. NOBLE: I object to word "acquired."

Q. That is, you executed a license with them? A. Yes.

Q. Who were the others, other than these on this list? 4

A. The Louis Lipp Company, Cincinnati.

Q. How much of a concern were they? A. I don't know.

Q. Do they cut much of a figure in the trade?

Mr. NOBLE: I object to that question. I don't know what that means. I don't know what you mean by asking if they cut much of a figure.

Q. Well, are they an important factor in the trade?

A. That is pretty hard to say.

Q. How many furnaces have they? A. I don't know.

Q. You know they do not have more than one or two furnaces?

A. I don't know how many they have, except by hearsay.

Q. What is the hearsay?

Mr. NOBLE: I object to that.

Q. Well, you keep informed as to conditions existing in the sanitary enameled iron ware trade?

A. As far as possible.

Q. You are as cognizant as any man in the trade, are you not?

Mr. NOBLE: I object to that. How does he know that?

A. I don't know, I think not.

Q. Well, Louis Lipp is not on this list? A. No.

Q. You have made efforts to get Louis Lipp?

A. Yes, sir.

Q. Did you write to him? A. Yes.

Q. Did you see him? A. Yes—no.

Q. You have not seen him? A. No.

Q. But you wrote to him and he declined?

A. I did not hear from him.

Q. Are there any other manufacturers outside of this list whom you tried to get? Do you recall any?

A. No. May I make a statement here?

Mr. GROSVENOR: Is it in answer to the last question?

THE WITNESS: No, previous to that. You asked if I saw Louis Lipp.

Mr. GROSVENOR: Yes.

THE WITNESS: No, not personally.

Q. Did you see any representative of the company?

A. Yes, Mr. Weil, the secretary.

Q. What did he say?

A. That business had been in a deplorable condition and—

Q. Well, did he or not enter into it?

Mr. NOBLE: Let him answer.

Mr. GROSVENOR: Whether Louis Lipp accepted his proposition or not is all I want. Did he or not accept? 1

A. No.

Mr. NOBLE: I object to the witness being interrupted, and I ask the stenographer to read the original question.

The stenographer then read the last question.

THE WITNESS: I forgot the Washington Iron Works of Los Angeles.

Q. Now, put it this way: What manufacturers other than the manufacturers on this list did not enter into it? 2

A. The Louis Lipp Company, the Washington Iron Works, the Rundel Manufacturing Company, Jones Holloware Company, Jacob Vollrath & Sons Manufacturing Company, and a concern of Columbus whose name I do not know.

Q. Are any of those concerns large factors in the trade?

A. I should say not.

Q. Do any of them manufacture bathtubs? A. Some.

Q. Which ones?

A. I believe the Washington Iron Works.

Q. How long have they been going? 3

A. Approximately a year and a half or two years.

Q. Do you know how many furnaces they have? A. No.

Q. One or two? A. Not over—no, I do not.

Q. Well, take the Jones Holloware Company; do they manufacture any lavatories? A. I believe a few.

Q. Kitchen sinks? A. Yes.

Q. How many furnaces for manufacturing sanitary enameled iron ware have they? A. I don't know.

Q. Now, of those you mentioned you say you tried to get Louis Lipp? A. Yes.

Q. Did you try any of the others? 4

A. The Washington Iron Works only.

Q. Did they enter into any arrangement? A. No.

Q. Why didn't you try the others?

A. I didn't consider them of enough importance to try.

Q. Now, coming back to the memorandum of agreement (reading): "12 The length of time for which the license agreement will be entered into and such other details as may be necessary for the perfection of the arrangement to

1 be determined at the next meeting of the various manufacturers." When was the next meeting referred to?

A. I didn't know then; the next meeting was the 29th and 30th of March.

Q. Did you discuss at that meeting the length of time for which the license agreement should be entered into?

THE WITNESS: The Chicago meeting?

Mr. GROSVENOR: No, the March 29 meeting?

A. No.

Q. For how long was it entered into? A. Two years.

2 Q. Who finally decided it? A. I did.

Q. Was it referred to the price and schedule committee?

A. Yes, sir.

Q. And that meeting was prior to the signing of the contracts? A. Yes.

Q. And prior to the assignment of the patent to you?

THE WITNESS: That is what?

Mr. GROSVENOR: I say was the meeting of the price and schedule committee to which we have referred this morning held previous to the assignment of the Arrott patent to you?

3

A. No—Oh, previous to the assignment—yes. It was held in April.

Q. For what period of time was the Arrott patent assigned to you?

A. Two years. I want to change that—

Mr. GROSVENOR: Well?

THE WITNESS: Your question was for how long the assignment was made?

Mr. GROSVENOR: Yes.

THE WITNESS: That was indefinite.

4

Q. Wasn't there an agreement at the same time which provided that the assignors to you had the power to terminate the assignment at the end of two years if they wished?

Mr. NOBLE: I object to that.

Q. Then, Mr. Wayman, will you look at Exhibit 5 attached to and made part of the petition on page 35. There is there what purports to be an agreement executed by you on the 4th of May, 1910, with the Standard Sanitary Manu-

facturing Company. Was such an agreement entered into? 1

A. Yes.

Q. Was that agreement executed at the same time as the assignment of the patent, which is made Exhibit 6 of the petition and is also dated May 4, 1910?

A. It was made the same day, but previous to the assignment of the patent.

Q. The agreement for the assignment was made previous to the assignment? A. Yes.

Q. Then, at the time this assignment of the Arrott patent was made to you, you had executed the agreement which is made Exhibit 5 of the petition? 2

THE WITNESS: At the time the assignment was made?

Mr. GROSVENOR: Read the question, please.

The stenographer then read the last question.

A. Yes.

Q. They were both on the same day? A. Yes.

Q. Did you execute one and then the other at once?

A. Yes.

Q. I now show you a paper and ask you if that is the original of the agreement which is made Exhibit 5 of the 3 petition? A. Yes.

Mr. GROSVENOR: I offer that in evidence as "Petitioner's Exhibit 5."

Paper referred to was then marked and filed as "Petitioner's Exhibit 5."

Q. I show you a paper and ask you if that is the assignment which is made Exhibit 6 of the petition? A. Yes.

Mr. GROSVENOR: I offer that in evidence as "Petitioner's Exhibit No. 6."

The paper referred to was then marked and filed 4 as "Petitioner's Exhibit No. 6."

Q. Who drew up this Exhibit No. 5? A. My attorneys.

Q. Who are they? A. Bakewell & Byrnes, of Pittsburg.

Q. When was that drawn up? A. In about the middle of March.

Q. I show you paragraph 2nd and call attention to the word "two" in handwriting; whose handwriting is that? A. That is mine.

1 Q. When was that written in?

A. Previous to the execution of the agreement.

Q. On the same day? A. Yes.

Q. Now, the meeting of the price and schedule committee was when?

A. Between April 6 and 15, I believe.

Q. What is the purpose of that paragraph providing for a reassignment?

THE WITNESS: Which paragraph is that?

Mr. GROSVENOR: This one (indicating).

2 A. That covered the length of time I had purchased the patent for, and if it was not desired to be renewed, the party who originally held the patent could reclaim it.

Q. The assignment was executed after that agreement was signed? A. Yes.

Q. Now, Mr. Wayman, the number of signatures at the end of this memorandum of agreement, which you say was drawn up on March 2nd, 1910— A. (Interrupting.) Yes.

Q. (Continuing): And which is made Exhibit No. 3, when was the signature of the McCrum-Howell Company attached? A. About March 7.

3 Q. March 7? A. Yes.

Q. Read the names and state the dates, as far as you can.

A. L. Wolff Manufacturing Company, March 3rd; that was the first signature; The Standard Sanitary Manufacturing Company signed March 5th; United States Sanitary Manufacturing Company, March 5; A. Weiskittel & Son Company, March 6, Sunday; McCrum-Howell Company, March 7; Blairsville Enameled Ware Company, March 8; I am not positive about the date of the signature of the National Sanitary Manufacturing Company; I believe it was the 9th. The Barnes Manufacturing Company signed March 10; 4 Humphryes Manufacturing Company was March 10; the Union Sanitary Manufacturing Company was about the 15th; the Wheeling Enameled Iron Company was the 17th. St. Patrick's Day.

Examination suspended.

At this point a recess was taken for one hour, the hearing to resume at 2 o'clock p. m.

After Recess. 1

EDWIN L. WAYMAN, resumed the stand for continuation of direct examination, and testified as follows:

DIRECT EXAMINATION BY Mr. GROSVENOR (continued):

Q. How did you obtain these signatures to this memorandum of agreement?

A. I went around to the different companies and had them sign it.

Q. On February 1, there was a meeting, was there not, of the members of the Sanitary Enameled Ware Association, that is February 1, 1910? 2

A. It was on or about that time, yes.

Q. Where was that meeting? A. Pittsburg.

Q. Were the various companies which signed this memorandum of agreement represented at that meeting?

Mr. NOBLE: May I ask what memorandum you refer to?

Mr. GROSVENOR: I am referring to Exhibit 3.

A. Well, it would be hard for me to say if all were present who did sign that petition; I am under the impression that some of them were not. 3

Q. Now, I show you a book of typewritten sheets. These are the minutes of the Sanitary Enameled Ware Association, are they not? A. Yes.

Q. The page to which I direct your attention is the page of minutes for the meeting of February 1, is it not? A. Yes.

Q. Will you refresh your memory by looking at that page, and then state what companies were represented at that meeting, and who represented them?

A. Well, of course, here is given a detailed list of those who were present, and I have no doubt that it is correct. 4

Mr. GROSVENOR: I offer as "Petitioner's Exhibit No. 7" the minutes for that day, of the general meeting, it being the third regular meeting of the members of the Sanitary Enameled Ware Association, February 1, 1910, at Pittsburg, consisting of three typewritten pages.

Mr. NOBLE: May I inquire for what purpose these are offered?

1 Mr. GROSVENOR: I will, in two or three questions, indicate the purpose.

Mr. NOBLE: Then I object to the minutes being received in evidence for any other purpose than to show, as stated by the witness, Wayman, what companies were represented at the meeting referred to. The rest of the minutes I object to as immaterial, irrelevant, and incompetent.

Q. Do you recall the circumstances of that meeting, Mr. Wayman?

2 THE WITNESS: With respect to why it was called?

Mr. GROSVENOR: Read the question, please.

The stenographer then read the last question.

A. Some, yes.

Q. Do you recall a general discussion in reference to a proposed licensing arrangement that was had at the close of the meeting? A. No, not at the close of the meeting.

Q. That was had during the meeting? A. No.

Q. That was had that day? A. Yes.

Q. Was it had in the same room? A. Yes.

Q. Was it had immediately after the meeting? A. Yes.

3 Q. Were the people that were present representing the members of this association present at that meeting?

A. Not as representing them.

Q. They were present individually?

A. They were present individually.

Q. Did all of them stay for that meeting?

A. I couldn't say.

Q. How many of them stayed? A. The majority.

Q. The most of them? A. Yes.

Q. There was then an informal conference, was there not, in respect to a contemplated licensing arrangement?

4 A. Yes.

Q. Did the different members present take part in the discussion? A. I think not.

Q. Who did take part in the discussion?

A. I did most of the talking.

Q. Who did some of the talking?

A. I don't recall that any of them did any of the talking, with the exception of answering whether such a matter in its proposed rough form would meet with their approval.

Q. What proposed rough form? 1

Mr. NOBLE: At this point I renew my objection previously stated with reference to the minutes of February 1.

A. I called attention to the fact that in my estimation the principal trouble with the enameling business was the fact that seconds—

Q. Now, Mr. Wayman, I want to get the form of the licensing arrangement. I don't want the reasons. I want the description of this proposed form for licensing arrangements which you suggested. Did you have a paper there? 2

A. I had a rough outline.

Q. Did you have a draft? A. I had a rough outline.

Q. Was it this Exhibit No. 3 already in evidence?

A. No.

Q. Was it something similar to that? A. No.

Q. Who had drawn that up? A. I had.

Q. Alone? A. Yes.

Q. In consultation with any one? A. No.

Q. Who else discussed this licensing arrangement? A. I don't recall that anybody discussed it. After I had given a general outline of what I had in mind, I had an expression of opinion asked for as to whether those present would be in favor of the proposed arrangement. 3

Q. What did they say?

A. Some objected, some didn't know what to say, and the majority said they would.

Q. I call your attention to the last paragraph on the third page of Exhibit 7, reading as follows: "The Commissioner called attention to a request from the New York Jobbers that the manufacturers meet their committee to confer on the subject of resale prices and the recognition only of blue list jobbers. It was the sense of the meeting that the Commissioner advise them to the effect that the manufacturers would be pleased to meet their committee just as soon as their own plans on this subject were in more complete form, and that considerable progress in this direction had been made." In what shape was that request? 4

A. That came in the shape of a request to me as Commissioner of the Sanitary Enameled Ware Association.

Q. From whom? A. The New York Jobbers.

1 Q. From whom was it?

A. A man named Conchar, as Secretary of a New York Organization; I have forgotten the exact name of it. It was the Metropolitan Jobbers' Association, or something like that.

Q. To what plans do you refer when you say "it was the sense of the meeting that the Commissioner advise them to the effect that the manufacturers would be pleased to meet their committee just as soon as their own plans on this subject were in more complete form."

A. Why, the plans I presented to them.

2 Q. That is, the licensing arrangement? A. Yes.

Q. (Reading): "And that considerable progress in this direction had been made."

THE WITNESS: Can I state what was brought up?

Mr. GROSVENOR: I want to know what was done.

THE WITNESS: With respect to what?

Mr. GROSVENOR: You said here "the manufacturers would be pleased to meet their committee just as soon as their own plans on this subject were in more complete form."

3 A. That referred to the plans I had presented to them and the fact that I told them I had options on three enameling patents, and I was anxious to give the jobbers the impression that the manufacturers were favorably considering the proposition which I had put up to them.

Q. You say here "it was the sense of the meeting that the Commissioner advise them;" that is not an expression on your part?

A. Inasmuch as the request was directed to the manufacturers, I answered in the name of the manufacturers.

Q. You spoke there of an option on these patents? Was that option in writing?

4 A. No, not at that time, it was reduced to writing later.

Q. When was it reduced to writing?

A. About the middle of March.

Q. You have it in writing now?

A. You have the copies which were executed.

Q. Those are dated May 4?

A. But they were written out in about the middle of March.

Q. Were they signed? A. On May 4.

Q. When did you execute an option? 1

THE WITNESS: Which one?

Mr. GROSVENOR: Just answer the question: When did you execute an option?

THE WITNESS: Do you mean in writing or verbally?

Mr. GROSVENOR: Either.

A. In December and January.

Q. Which? A. Both.

Q. When was the first one?

A. The first was about the middle of December, the Ditheridge patent. 2

Q. This was what?

A. A verbal option to sell that patent.

Q. In December? A. Yes.

Q. Were all these options verbal? A. Yes.

Q. How much did you pay for them?

Mr. NOBLE: Objected to as incompetent, irrelevant and immaterial.

A. Nothing at the time.

Q. You did not pay anything? A. No. 3

Mr. NOBLE: I object to this line of questioning on the same grounds as above stated; the witness was about to say when he got these options.

Mr. GROSVENOR: Read the last few questions and answers, please.

The stenographer then read the questions and answers referred to.

Mr. NOBLE: The witness has been interrupted in answering when he got the options on the three patents mentioned.

Mr. GROSVENOR: Well, he was interrupted by his own counsel. 4

Q. You did not pay anything for the three patents?

A. No—not at the time.

Q. When did you first pay for them?

Same objection.

A. May 4.

Q. After the execution of these written contracts?

1 A. At the time I executed the contracts.
Q. You paid then?

Same objection.

A. Yes.
Q. You paid nothing for these options in December?

Same objection.

A. No.
Q. Whom did you negotiate with in December for the purchase of the Arrott patent? A. Mr. Dawes.
2 Q. Whom else of the Standard did you see with respect to the matter?

THE WITNESS: You mean as to the patent?
MR. GROSVENOR: The assignment of the patent to you.

A. I saw Mr. Ahrens.
Q. Who else?
A. That is all, with reference to the assignment of the patent.
Q. This was in December?
3 A. December, 1909, I saw Mr. Dawes, yes.
Q. Whom did you see with reference to the Ditheridge patent? A. Mr. Hammann.
Q. Of what firm? A. The J. L. Mott Iron Works.
Q. That was December too? A. December 15.
Q. And the Arrott patent was when? A. December 28.
Q. And the Lindsay patent?
A. That was early in January.
Q. Whom did you see?
A. John Clifford, of the Wolff Company, in Chicago.
Q. Is this Arrott patent a valuable patent?
A. I believe it is.
4 Q. At this meeting on February 1, you said you had a proposed plan; weren't those the words you used? A. Yes.

MR. NOBLE: A rough outline.
THE WITNESS: Yes, a rough outline.

BY MR. GROSVENOR:

Q. Was that rough outline in writing? A. Yes.
Q. Have you retained a copy of it? A. No.

Q. What was the first rough outline of the licensing arrangement that you have retained? 1

A. The one that I presented at the meeting at Mount Clemens—no, at New York City.

Q. Is not the memorandum of agreement, which you drew up early in March and took to these various manufacturers, an earlier form than that presented at the meeting on March 30?

A. That was not a license agreement, that earlier form.

Q. Doesn't that contemplate the entering into of the licensing arrangement?

THE WITNESS: You mean Exhibit 3? 2

Mr. GROSVENOR: Yes, Exhibit 3.

A. Yes.

Q. Isn't Exhibit 3 the earliest paper you have in the shape of a licensing agreement?

THE WITNESS: In the shape of an agreement, you mean?

Mr. GROSVENOR: Yes, in writing.

A. Yes, in writing—well, do you mean with reference to patents? 3

Mr. GROSVENOR: No, with reference to the licensing arrangement.

THE WITNESS: Yes, that is the earliest that I have retained.

Q. What did you do with the earlier forms?

A. I revised them from time to time and kept throwing them away as I revised them.

Q. The next form after that memorandum you took around was a printed form which you sent to the various manufacturers whom you wished to have enter into the arrangement with you? A. Yes, sir. 4

Q. That was before the meeting of March 29, was it not?

A. Yes, sir; but those papers were the same as I presented, I believe, at the meeting of March 29.

Q. I show you a printed paper of four pages, one page being blank, entitled "Sample copy of proposed form License Agreement?" A. Yes.

Q. And I ask you if that was the first printed copy of that license contract which you issued? A. I think so.

1 Q. That was issued by you to the different manufacturers about March 24, was it not?

A. I believe it was a little previous to that meeting.

Q. That is the copy which the different manufacturers had before them to consider at those meetings on March 29 and 30? A. Yes.

Q. You had sent each of them a few days prior to the meeting a copy of that contract, had you not? A. Yes.

Mr. GROSVENOR: I offer that in evidence as "Petitioner's Exhibit No. 8," without the pencil marks.

2 Paper referred to was then marked and filed as "Petitioner's Exhibit No. 8."

Q. I now show you the printed paper entitled "License Agreement" which I have previously shown you, and ask you if that is not a copy of the agreement as entered into by you with the several manufacturers, in its final form?

A. Yes, sir.

Mr. GROSVENOR: I now offer that in evidence as "Petitioner's Exhibit No. 9."

3 The paper referred to was then marked and filed as "Petitioner's Exhibit No. 9."

Q. The paper which I have just shown you related to the agreement between you and the several manufacturers?

A. Yes.

Q. At the meetings of March 29 and March 30 were also considered the contracts which were to be entered into between the manufacturers and the jobbers, is that right?

A. A rough outline, yes.

Q. At the time you sent out this sample copy of the license agreement known as "Petitioner's Exhibit No. 8"?

A. Yes.

4 Q. (Continuing): You sent also a sample copy of the proposed jobbers' license agreement?

Q. That is a sample copy of the proposed agreement which the manufacturers were to enter into with the jobbers? A. Yes.

Q. I show you a printed sheet of four pages and ask you if that is a copy of the forms sent out on that day, about March 24? A. Yes.

Q. It is the same thing? A. Yes.

Mr. GROSVENOR: I offer that in evidence as "Petitioner's Exhibit No. 10." 1

Paper referred to was then marked and filed as "Petitioner's Exhibit No. 10."

Q. I show you another printed paper of four pages with another page attached, by perforations, entitled "Jobbers' License Agreement," and ask you if that is a copy of the contract finally accepted, or of the form finally accepted as the contract between manufacturers and jobbers?

A. Yes, that is the final one.

Mr. GROSVENOR: I offer that in evidence as "Petitioner's Exhibit No. 11." 2

Paper referred to was then marked and filed as "Petitioner's Exhibit No. 11."

Q. Coming back to Petitioner's Exhibit No. 3, which is the memorandum of agreement to which we have referred so often, and referring to page 3 and the so-called preferentials proposed to be allowed to the several manufacturers, how, at the time this draft was drawn up, had you obtained those figures?

A. That represented my idea of about what was right.

Q. Had you written to the different manufacturers asking them what preferentials they desired based on the Standard Sanitary Company list? 3

A. I wrote them, but whether it was before or after this, I do not recall.

Q. Do you recall writing a series of letters to the several manufacturers shortly after that meeting of February 1, asking them to send in their list of patents? A. Yes.

Q. You were subpœnaed to produce your letters with several companies, and among others there were letters exchanged between you and W. J. Kohler, or J. M. Kohler & Sons of Sheboygan, Wisconsin. Have you produced those letters? 4

A. No, I told you at the time that those letters were returned to Mr. Kohler, and Mr. Kohler told me he had destroyed them.

Q. Are those letters in your possession? A. No.

Q. What has become of them?

A. I returned them to the individual manufacturers at the time, all of the correspondence.

1 Q. We are only talking about Kohler's. What became of the Kohler letters?

Mr. NOBLE: The witness said he returned them.

A. I returned them.
Q. Returned them to Mr. Kohler? A. Yes.
Q. The copies of your letters to him?
A. Yes, and his replies.
Q. And the originals of his letters to you? A. Yes.
Q. Have you any of those letters now? A. No.
Q. I show you a letter purporting to be a copy of a
2 letter addressed by you to him on February 7, 1910, and ask you if that is a copy of the letter you addressed to him on that day?
A. That is approximately correct, as I remember it.

Mr. GROSVENOR: I offer that in evidence as "Petitioner's Exhibit No. 12," with the statement that I intend to produce the original letter, or if not, to prove that the original has been lost, and that this is a true copy, that is, without the pencil marks. The letter which I now introduce is contained on two sheets and begins with the date, February 7, 1910,
3 third line, first page, and continues to the end of the words, "E. L. Wayman" on the second sheet, eighth line. I will read this letter. (Reading):

"February 7, 1910.

"Walter J. Kohler, President,
"J. M. Kohler Sons Company,
"Sheboygan, Wisconsin.

"Dear Sir:

"Referring to the informal discussion that took
4 place after the regular meeting regarding resale prices and license arrangement."

You are there referring to the meeting about which I asked you several questions?

A. I am referring to the meeting after the Sanitary Enameled Ware Association meeting.
Q. On February 1? A. Yes.
Q. At Pittsburg? A. Yes.

Q. (Reading): "Have you any patents that you would be willing to assign along with those owned by the other companies, for the purpose of this arrangement? If such is the case will you kindly send me the following information as quickly as possible." 1

This letter is practically a copy of a similar letter addressed by you to other manufacturers requesting a statement of what patents they had? A. Yes.

Q. This letter follows the general line of the letters you addressed about the same date to the other manufacturers? A. I think that is an exact copy.

Q. That is, it was a circular letter? 2

A. A circular letter to all the companies.

Q. Engaged in the manufacture of sanitary enameled iron ware?

A. Yes, sir; with the exception of a few small companies not in the list.

Q. And those small companies you did not consider important enough to take into the matter?

A. I did not at the time.

Q. Because they were not important enough?

A. That, and because I did not think I could accomplish anything by doing it.

Q. Then the letter shows the schedules, &c. (reading): "In order to get a preliminary statement of each manufacturer's ideas, will you kindly write me regarding the following:" Now, this series of letters you sent out about February 7, 1910, was addressed to these manufacturers before this memorandum of agreement was drawn up by you? 3

A. Yes, if that is the date.

Q. Nearly a month before? A. Yes.

Q. Therefore, at the time you drew that up you had received replies from those letters?

A. As I remember, some of them did not reply.

Q. Did most of them reply? 4

A. I cannot say; that is why I say this list in Exhibit 3 showed about what I thought the proper preferentials.

Q. Then this preliminary agreement, as you call it, was largely based on the information you had obtained from the manufacturers in response to this series of letters sent out by you on or about February 7?

A. I couldn't say that.

1 Mr. NOBLE: I object—don't reply until my objection is made.

Mr. GROSVENOR: I think the answers should come in before the objections.

THE WITNESS: That is not the usual practice.

Mr. GROSVENOR: And the objections as interposed this afternoon by counsel often have the effect of changing the witness' mind from the answer which he was going to give.

Mr. NOBLE: I object to the remarks of counsel, and the insinuation he wishes to have conveyed I resent.

2 My objections are urged upon the record, stump speeches of counsel for the Government to the contrary notwithstanding.

BY Mr. GROSVENOR:

Q. Now, going on you say, "In order to get a preliminary statement of each manufacturer's ideas, will you kindly write me regarding the following: 1. Using the Standard Sanitary Manufacturing Company's published prices as a basis, what differential, if any, do you believe your company would require in order to obtain its fair

3 share of the business?" There, I take it, you were referring to the differentials which were subsequently allotted to the various companies, as you testified this morning? A. Yes.

Q. Then follows the preferential discount, Schedules 1, 2, 3 and 4, etc., and leaving a place here (indicating)?

A. Yes, sir.

Q. And you intended him to indicate here what differential he thought he should get? A. Yes.

Q. That is from those three schedules, I mean. You only mentioned here three schedules, isn't that right?

A. Four.

4 Mr. GROSVENOR: Yes, four, that is right.

THE WITNESS: Four, yes. That was a brief outline of the classes of goods at that time, as far as I had gone.

Q. (Reading): "2. How many active furnaces do you anticipate operating the balance of the year? This information is necessary in order to figure out the total amount of royalty. Thanking you in advance for this information as promptly as possible, I am, E. L. Wayman." You enclosed

with the letter the schedules which follow, respecting preferential selling discounts to jobbers and the patents? 1

THE WITNESS: You mean attached to this letter to Kohler?

Mr. GROSVENOR: Yes, you enclosed them with the letter.

A. I don't think so; no, I don't think so.

Q. Do you recall sending him anything like that at any time?

A. I recall sending to the manufacturers the list of patents I had under consideration; now, whether it went with this letter, I am not prepared to say. 2

Q. You don't know whether you sent it to Kohler or not?

A. No, that looks to me like three or four letters run in together there.

Q. You do state that, so far as your signature is concerned—

A. (Interrupting): That ends the letter.

Q. Taking up Petitioner's Exhibits 8 and 9, you stated that Exhibit No. 8 was the proposed form of license agreement which you issued to the different manufacturers about March 24? A. Yes. 3

Q. And that Exhibit 9 was the form of the license agreement between you and the licensed manufacturers as finally adopted? A. Yes.

Q. Mr. Wayman, how many of these manufacturers finally entered into a license arrangement with you?

A. Sixteen.

Q. Most of them were executed on what day?

A. May 6.

Q. Where? A. In New York City.

Q. Where in New York City? 4

A. At the office of Noble, Jackson & Hubbard.

Q. Are they lawyers? A. Yes.

Q. How many were executed on that day?

A. Fourteen, I think.

Q. Were you present at the time? A. Yes.

Q. Was there a general meeting of these manufacturers at the time? A. To execute these licenses, yes.

Q. Were they all executed together? A. No.

Q. Were they executed one after the other? A. Yes.

1 Q. Were all the manufacturers present when the agreements were executed? A. No.

Q. Most of them? A. Yes.

Q. How were they called out?

A. I had them in alphabetical order by firms.

Q. Did they wait until all were present before they called the first? A. No.

Mr. NOBLE: I object to the question. The witness said that he called them up, and the question was, "Did they wait until all were present until they called the first."

2 Q. You called them up? A. Yes.

Q. In alphabetical order? A. Yes.

Q. Who was the first alphabetically?

A. The Barnes Manufacturing Company.

Q. Where did you meet there in the office?

THE WITNESS: In what room, do you mean?

Mr. GROSVENOR: Yes.

A. A general assembly room.

Q. A general assembly room?

A. Or meeting room, I don't know what they call it.

3 Q. This May 6th was the day after the assignment of the patent to you? A. No.

Q. What day was the Arrott patent assigned you?

A. The fourth.

Q. And the Ditheridge patent? A. The fifth.

Q. The Lindsay patent? A. The fourth.

Q. There had been a call for that meeting on May 6th several days before, had there not? A. Yes.

Q. How long before had the call been issued?

A. I cannot recall exactly.

Q. Well, approximately; a week or ten days, wasn't it?

4 A. I should say four or five days or a week.

Q. At any rate before the assignment of the patents to you?

A. I couldn't say; I don't know; it might be and it might not.

Q. Taking up Exhibit 8 and reading paragraph No. 2, it says: "The Licensor hereby agrees to suspend his claims against the Licensee and its customers or patrons for damages or profits which he may be entitled to receive for any

claims for any past infringement of said patent by said Licensee, as long as said Licensee continues to perform all of its obligations under this contract." Now, this assignment to you was on May 4? A. Yes. 1

Q. You entered into the contract on May 6?

A. Yes, sir.

Q. Did the assignment to you of the patent assign any right to sue for any possible past infringement?

THE WITNESS: Assign any right to sue?

Mr. GROSVENOR: Assign any right to you to sue for any possible past infringement.

Mr. NOBLE: The assignment is in writing, and I object to any question asking the witness what the contract means or how it acts. The instrument speaks for itself. 2

Mr. GROSVENOR: What do you say in answer to that question?

THE WITNESS: I understand that on advice of counsel I should refuse to answer it.

Q. Well, paragraph 5, Mr. Wayman, of Exhibit No. 8 states: "This agreement is entered into with the understanding that the Licensee has the privilege of quoting to jobbers only the following additional discounts from the regular selling prices to the jobbers as established by the Licensor. These additional discounts when given shall appear on the invoices rendered to the jobber." Now, will you look at that paragraph. There are no discounts there stated, are there? A. No. 3

Q. It was the purpose of the meeting of March 29 to consider among other things the discounts or preferentials which should be added under paragraph 5.

Mr. NOBLE: I object to the question in its present form. Allow the witness to testify. The objection is that the question suggests the form of answer that the counsel desires. 4

Mr. GROSVENOR: It is proper with a hostile witness.

Mr. NOBLE: The witness has not shown any hostility, and the attitude of counsel for the Government is the only hostility which has been seen here by anybody.

1 A. When the meeting of March 29 and 30 was called, I hardly thought it was possible to get all these details whipped into shape.

Q. So you left the blank there?

A. Yes—no, that doesn't follow because I had those schedules on an attached sheet of paper, as I remember it, together with the differentials.

Q. Doesn't paragraph 5 refer to the differentials which manufacturers were to allow?

A. Yes, but the schedule is not complete, as I testified before.

2 Q. Will you look at the separate sheets entitled "License Agreement," similar in form to Petitioner's Exhibit 9, and I will ask you if these are the original contracts entered into by you with the licensed manufacturers, whose names are attached to the papers?

Mr. NOBLE: In producing these original contracts counsel requests counsel for the Government to substitute for these originals compared copies as exhibits, as these are of value to the witness, Wayman, the licensor.

Mr. GROSVENOR: I offer in evidence these agree-
3 ments as "Petitioner's Exhibits Nos. 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28."

Mr. NOBLE: I desire to explain that those instruments are complete in so far as they themselves go, but there should be attached to them the schedules mentioned in them. I want you to understand that the schedules referred to in these license agreements are the jobbers' license agreements and the price lists.

Q. Now, Mr. Wayman, in these originals which I have just introduced, the differentials allowed to the different
4 licensed manufacturers are stated under paragraph 5 of the sample copy of the proposed license agreement?

A. Yes, they are stated there.

Q. In the originals? A. Yes.

Q. Exhibit 8, which, as stated, was the sample copy of the license agreement issued by you about March 24, contains no reference to a Commission? A. No.

Q. The final agreement executed on May 6 does con-

tain such a provision under paragraph 6, which has been inserted in the paragraph so numbered? A. Yes. 1

Q. Was not that provision respecting the appointment of a Commission the result of a resolution passed at the meeting of March 30, which has already been made Petitioner's Exhibit No. 2? A. No.

Q. How did that provision respecting the appointment of a Commission come into the contract, if it was not the result of that resolution of March 30?

Mr. NOBLE: I object to that form of question. The witness has frankly answered no. The question in that form contains the suggestion that the witness has not been candid in his answer. 2

Mr. GROSVENOR: Counsel states that there is no implication that the witness has not been frank, but simply asks the plain question.

A. At the meeting I held with the committee at Mount Clemens, one of the committee wanted me to transfer my options on patents to a holding company, and I objected to that very strongly and suggested that I would employ an advisory committee. I took the matter up with my counsel with reference to this paragraph, and it was composed by us as it appears in the license agreement. 3

Q. At this time you had paid nothing for the options of which you speak?

Mr. NOBLE: Objected to on the ground that it is incompetent, irrelevant and immaterial.

A. No.

Q. Now, Mr. Wayman how was this Commission appointed?

A. They were elected by ballot after the license agreements were entered into. 4

Q. Who are the members of the Commission?

A. The members of the Commission are Howard T. Gates, Secretary of the McCrum-Howell Company, New York City; A. H. Cline, Jr., Secretary United States Sanitary Manufacturing Company; T. R. Barnes, Secretary and General Manager of the Barnes Manufacturing Company; F. J. Torrance, First Vice-President of the Standard Sanitary Manufacturing Company of Pittsburg; H. M.

1 Hoelscher, Secretary L. Wolff Manufacturing Company, of Chicago; E. L. Wayman, Chairman.

Q. Were you elected by ballot? A. No.

Q. The other five were? A. Yes.

Q. Each licensed manufacturer having one vote?

A. Yes.

Q. Was this election held at the time the agreements were signed? A. Immediately after.

Q. On May 6? A. Yes.

Q. Did you have a ballot? A. No.

Q. You had no way to indicate you selection?

2 A. Not according to the license, but I did indicate my selection.

Q. How?

A. By suggesting to the assembled licensees that inasmuch as the committee which had met with me at Mount Clemens was familiar with this proposition in its entirety, that I thought they could be served best by making this Commission permanent as the Commission provided for in this agreement, and that was done unanimously.

Q. Then the Commission is the same as the Mount Clemens Commission? A. Yes, sir.

3 Q. And it was elected by ballot at this meeting?

A. Yes, I wish to call your attention to the paragraph which says that the five shall be designated by a majority of the parties holding licenses similar to this license, and which specifies that I shall have no vote in the matter.

Q. As I have previously pointed out to you, the form of contract which you sent around on March 24 did not contemplate the appointment of the Commission? A. No.

Q. That idea was first suggested at the Mount Clemens meeting? A. Yes.

Q. Who first suggested it? A. I think Mr. Hoelscher of the L. Wolff Manufacturing Company.

4 Q. In paragraph 6 of Exhibit 8, the form issued on March 24, it is stated: "All terms, conditions, regulations and prices now established by the Licensor and set forth in Schedules attached to and made part hereof, shall be in force and effect until other terms, conditions, regulations and prices are substituted therefor by the Licensor, which substitution he is entitled to make from time to time hereafter by notice in writing to the Licensee." Now, in the final form of the contract—that is, in the contract as signed

May 6—those words "which substitution he is entitled to make from time to time hereafter by notice in writing to the Licensee" are changed to say: "which substitution can only be made by him with the approval of a majority of the members of the Commission, hereinbefore prescribed." According to the provisions, then, of the contracts between you and the manufacturers, terms and conditions relative to prices and discounts cannot be changed except with the approval of a majority of the members of the Commission? Is that right? 1

Mr. NOBLE: I object to the question. The instrument has been introduced in evidence by the Government and speaks for itself. 2

Mr. GROSVENOR: Counsel for Government states that he is endeavoring to ascertain the working arrangements of the combination as it exists today, and asks the question for that reason.

Mr. NOBLE: I object to the use of the word "combination."

A. I will say yes, with the additional provision that they cannot change the prices unless I assent to it.

Q. Where do you find that in the contract? 3

A. It is evident from reading the contract.

Q. Returning to Exhibit 8, that contract provides under paragraph 9 "in case of failure on the part of the licensee to comply fully with the terms of this agreement during any month, the Licensor may withhold any and all unpaid rebates and declare the same forfeited (as hereinafter provided for), as penalty for said violation, and shall at once notify the Licensee to that effect." What unpaid rebates are meant there? A. The 80 per cent.

Q. (Reading): "Penalties shall be deducted from all unpaid rebates as follows;" then follow two paragraphs which were stricken out of the agreement as finally adopted? 4

A. Yes, that is true.

Q. When was that done?

A. In my negotiations with the committee.

Q. At Mount Clemens? A. Yes.

Q. So you retained it so as to read "9. In case of failure on the part of the Licensee to comply in any particular with the terms of this agreement during any

1 month, the Licensor may withhold any and all unpaid rebates and declare the same forfeited as penalty for such violation and shall at once notify the Licensee to that effect." There again you refer to that 80 per cent.?

A. Yes, sir.

Q. Now, in Exhibit No. 8, paragraph 14, reads "This agreement is binding upon the parties hereto, and the successor and assigns of each of them, and shall continue in force for a period of (blank) years from the date hereof, unless previously terminated as herein provided."

A. Yes.

2 Q. In Exhibit 9, the contract as finally adopted, the blank is filled in by the word "two." I understood you to say this morning that the period of two years was determined upon at Mount Clemens?

A. Yes, at my suggestion.

Q. Had you at that time any pecuniary interest in the patents by virtue of the payment of any consideration?

Mr. NOBLE: I object to the question, which calls for a conclusion, and further I object on the ground that it is immaterial and irrelevant in this case.

Mr. GROSVENOR: Just read the question, please.

3 The stenographer then read the last question.

A. No.

Q. On the third page of Exhibit 8 the schedule of patents is enumerated; all of those patents were omitted from the contract as finally adopted, except the Arrott, Lindsay and Ditheridge patents, is that right?

A. That is right.

Q. At whose suggestion were those omitted?

Mr. NOBLE: I object to the question as containing the insinuation that there was a suggestion.

4 Q. Well, why were they omitted?

A. I would like to answer that in detail. At the time I had all these patents in mind—

Q. What do you mean by "in mind"?

A. That is, with the idea of purchasing them, that I would try to standardize the method of manufacture and the best designs for goods in all factories.

Q. You would do it?

A. I would try to do that, yes. I found after investi-

gating the patents and advising with counsel, that they were immaterial for the purposes desired, most of them being design patents. I thereupon decided that I would attempt to license the manufacturers under enameling patents only, consisting of a basic patent known as the Arrott patent, and two other patents known as the Ditheridge patent and the Lindsay patent, which I considered to be infringements of the Arrott patent. 1

Q. Were you the owner of that concern up in Detroit?

A. I was a stockholder.

Q. Has that gone to pieces?

A. As far as marketing its product, it has; the property is simply lying there. 2

Q. How much did you pay for this Arrott patent?

A. Ten thousand dollars.

Q. How much did you pay on May 4?

A. $5,000, with a note for $5,000.

Q. Have you paid the note? A. No.

Q. How much did you pay for the Lindsay patent?

A. $500.

Q. And the Ditheridge patent? A. $500.

Q. By virtue of these patents you claim to control the disposition of the output of these licensed manufacturers? 3

A. Yes.

Q. And the total output was how much a year?

Mr. NOBLE: Objected to. He said he couldn't tell you.

Q. It is over ten millions a year, is it not?

A. I don't know. It would be purely a guess.

Q. Is it one million? A. Yes.

Q. It is more than one million? A. Yes.

Q. And it is a great deal more than five million?

A. Yes. 4

Q. The control of this vast business you claim to have acquired by the expenditure of how much money?

Mr. NOBLE: I object to the form of the question. The witness states he bought the patents.

Mr. GROSVENOR: The counsel for the Government states that the intention in the assignment of the patent is material in this case. These questions are addressed to the witness for the purpose of establish-

1 ing the purpose alleged in the petition. Will you read the last question?

The stenographer then read the last question.

A. Eleven thousand dollars.

Q. Of which you have paid out how much?

A. $5,750—$6,000.

Q. Now, these different manufacturers make reports to you, of course, under the terms of the contract, of the number of furnaces operating per day? A. Yes.

Q. Since the entering into of these contracts of May 6, the Standard Sanitary Manufacturing Company has been
2 operating how many a day? Well, leave that and I will ask you that later. You have been following your business, of course, pretty closely. Since May 6th how many furnaces have you had operating every day under the licensing arrangements?

Mr. NOBLE: You want just a rough answer?

Mr. GROSVENOR: I want the best.

A. Approximately 70 per cent. of the licensed furnaces.

Q. Approximately 70 per cent.? A. Yes.

Q. How many furnaces does that make?

3 A. In exact figures on that basis, 136½.

Q. And each of those is paying you how much per day?

A. Five dollars per day.

Q. And from that five dollars per day you pay a rebate to them of 80 per cent. if they observe the terms of the contract? A. Yes.

Q. Have they all observed the terms of the contract?

A. I don't know.

Q. Have you paid your 80 per cent.? A. No.

Q. Have you paid any of it? A. No.

Q. Is that because the date established in the contracts
4 for the retainment of the rebate has not yet arrived?

A. The date for the repayment has arrived, but I have not been able to find out if they are entitled to the rebate yet.

Q. In other words, you have not had an opportunity to have your auditors verify the books? A. No.

Q. You have had, then, 136 furnaces paying you $5 a day; that makes $680 a day? A. Yes, $680 a day.

Q. And these contracts provide that you shall receive

in this proportion for a period of two years, is that right? 1

A. That is right.

Q. And for this sum you have paid already only $6,000, is that right?

A. Yes, but you must consider the net and not the gross when you compare it with eleven thousand or six thousand dollars.

Q. I suppose these men have been observing their contracts and that you will pay the 80 per cent back; that leaves $136 a day? A. Yes.

Q. How large is your office force?

A. I have four people. 2

Q. Are they stenographers or clerks?

A. Two stenographers, one clerk, a bookkeeper and auditor.

Q. Where is your office? A. The Arrott building.

Q. How many rooms have you? A. Three.

Q. Now, taking up Exhibit 9, paragraph 10 provides "The restrictions herein contained as to the prices at which sanitary enameled iron ware is to be sold shall not apply to sanitary enameled iron ware sold and exported to foreign countries." Then added to that paragraph are these words: "such sales must be proved bona fide to the Licensor." A. Yes. 3

Q. These 16 licensed manufacturers cannot sell in this country any sanitary enameled ware except pursuant to these contracts with you, can they?

A. With the exception of goods for export.

Q. They can export goods, and in doing that they are not subject to any restriction? A. Not on the selling prices.

Q. Are there any restrictions on anything else?

A. No, what I meant by that remark was that although they are subjected to the observance of no selling prices, I do obtain my royalty.

Q. On anything— 4

A. (Interrupting): Manufactured in this country.

Q. And shipped over? A. Yes.

Q. That goes to swell your revenue? A. Yes.

Q. Taking up Exhibit 10, which you state was the sample copy of the proposed form of jobber's agreement between the manufacturers and the jobbers, and which was issued by you about March 24 to the manufacturers; that is it, is it not?

A. Yes.

1 Q. That again enumerates a long schedule of patents which were enumerated in the manufacturers' license agreement of the same day? A. Yes.

Q. That is the earlier form? A. Yes.

Q. Those are omitted in the final jobber's agreement for the reasons given? A. Yes.

Q. On page 2 of Exhibit 10 the discounts to the jobbers are stated for the different classes. If you will look at the final contract, which is Petitioner's Exhibit No. 11, you will see that there is a difference in the discounts allowed to the jobbers. Were those differences arrived at by consultation
2 of the price and schedule committee? A. No.

Q. How were they arrived at?

A. I simply put them in there of my own accord.

Q. That is, you inserted them in the preliminary agreement issued March 24 of your own accord? A. Yes.

Q. They were not determined upon at that time?

A. No.

Q. They were determined upon finally?

A. Yes, by myself.

Q. When were they determined?

A. About the tenth of May, I should think.

Q. That was after the signing of the agreements?
3 A. Yes, that is true.

Q. Then, these jobbers' agreements were not completed May 6? A. No.

Q. The form was practically completed?

A. Several changes were made after May 6; several were as late as June 2nd.

Q. Were those determined by the price and schedule committee?

A. They were approved by the price and schedule committee to whom I submitted them.

Q. What were the changes in the final form from the
4 preliminary form?

A. This was the most important change; this appears at the top of the final jobber's license agreement form, known as Petitioner's Exhibit No. 11: "Note, this contract must be executed by the purchaser in order to purchase licensed sanitary enameled iron ware."

Q. That line, you say, was inserted? A. Yes.

Q. But that is not a condition of the contract; that line

refers to a condition of the contract embodied later and known in the trade as what? 1

A. I think that is part of the contract.

Q. That note which you put there is not part of the contract, is it? A. I would so consider it.

Q. It is above the beginning of the words "This agreement made this (blank) day," is it not?

A. Yes, but I consider that a part of the contract. If by others it is not considered a part of the contract, it is further covered by my circular letter of June 3 as a condition which is provided for in paragraph 9 of the jobber's license agreement, which provides that the terms and rules 2 are subject to change from time to time, or rather until such other conditions are imposed by the licensor, which provision he has power to make from time to time.

Q. Now, as a matter of fact, whether it is part of the contract or not, you consider it as part of the contract?

A. I do.

Q. And you are directing the manufacturers to observe that part of the contract, are you not? A. Yes.

Q. In other words, in order for a jobber in the United States of sanitary enameled iron ware to be enabled to purchase any sanitary enameled iron ware from any of these 3 16 manufacturers, he must execute this jobber's license agreement, is that right? A. Yes.

Q. Now, in paragraph 7 of this same exhibit, No. 10, namely, the sample copy of the proposed form of jobber's agreement, issued by you March 24, you have stated the names of certain manufacturers who did not enter into licensing arrangements with you? A. Yes.

Q. Will you point those out?

A. The Blairsville Enameled Ware Company, Blairsville, Pennsylvania; Clymer Manufacturing Company, at Indiana, Pennsylvania; the Iron City Sanitary Manufacturing Company, Pittsburg, and J. M. Kohler Sons Company, Sheboygan, Wisconsin. 4

Q. At the time you issued this to the manufacturers, that is this sample copy which is Petitioner's Exhibit No. 10, you were endeavoring to persuade those four who did not enter into arrangements with you to do so? A. Yes.

Q. In paragraph 9 of Exhibit 11, which was the final form of the jobber's license agreement, I desire to direct your attention to the following: "The purchaser under-

1 stands that the resale prices of all ware manufactured under the Letters Patent enumerated herein, as established from time to time by the company, must be maintained by all licensed sanitary enameled iron ware manufacturers and by all jobbers and dealers, and that sales by one jobber to another cannot be made at any better prices than established in the sheets." Does that mean that if a jobber has signed this contract with a licensed manufacturer and another jobber has not signed, that the jobber who has signed cannot sell to the jobber who has not signed at any better than resale prices?

2 A. No, that does not express the meaning of it.

Q. What does it mean?

A. The object and meaning of this paragraph which reads: "Sales by one jobber to another cannot be made at any better prices than established in the sheets," was inserted for the purpose of preventing several jobbers lumping their purchases and obtaining a rebate to which they were not entitled.

Q. "Another" does not refer to one who has not signed? A. No.

Q. As a matter of fact, though, any jobber who has signed one of these contracts cannot sell his enameled ware
3 whether to a plumber or jobber at any other prices than those set out in the sheets? A. That is right.

Q. Then if a jobber who has signed is willing to sell to a jobber who has not signed, he must sell at the resale prices? A. Yes, or to a jobber who has signed.

Q. In your first jobber's license contract issued March 24, the amounts of sales which had to be made by the jobbers of the goods of the licensed manufacturers to entitle them to these additional discounts had not been ascertained or determined upon? A. No.

Q. Those were, however, arranged prior to the signing
4 of the final contract? A. Yes.

Q. Was it discussed at the meeting of March 29, what amounts these sales must be? A. No.

Q. Did the price and schedule committee take that up?

A. Yes.

Q. And determined the question after consultation with you? A. Yes.

Q. Determined it?

A. Yes, which I afterwards changed.

Q. With their consent? A. Yes. 1

Examination suspended.

The taking of testimony was then adjourned to the first day of November, 1910, at 9:30 o'clock a. m., at the same place.

Pittsburg, Pennsylvania, November 1, 1910.

Pursuant to adjournment the evidence for the petitioner was resumed as follows, with same counsel present: 2

EDWIN L. WAYMAN, a witness heretofore produced and sworn, resumed the stand for continuation of direct examination, and testified as follows:

DIRECT EXAMINATION (continued):

Mr. GROSVENOR: I offer in evidence as "Petitioner's Exhibit No. 29," a paper entitled 'Statements and Admissions of Defendants," signed by the solicitors for and of counsel with defendants.

Paper referred to was then marked and filed as "Petitioner's Exhibit No. 29." 3

BY Mr. GROSVENOR:

Q. Mr. Wayman, I direct your attention to Exhibit No. 11, being the jobber's license agreement, and to paragraph 2 of that agreement. That paragraph states: "Goods will be sold to the purchaser, f. o. b. cars where factory is located." What factory is meant there?

A. Any of the licensed factories.

Q. That is, the factories of the licensed manufacturers?

A. Yes.

Q. Now look at page 9 of the petition of the Government for the list of defendants? A. Yes. 4

Q. Will you state after each corporation defendant where its factory is located?

A. Standard Sanitary Manufacturing Company, Allegheny and New Brighton, Pennsylvania and Louisville, Kentucky; A. Weiskittel & Son Company, Baltimore, Maryland; Barnes Manufacturing Company, Mansfield, Ohio; Cahill Iron Works, Chattanooga, Tennessee; Colwell Lead

1 Company, Elizabeth, New Jersey; the Day-Ward Company, Warren, Ohio; the Humphryes Manufacturing Company, Mansfield, Ohio; Kerner Manufacturing Company, Zelienople, Pennsylvania; the J. L. Mott Iron Works, Trenton, New Jersey; McVay & Walker, Braddock, Pennsylvania; the McCrum-Howell Company at Uniontown, Pennsylvania, their Norwich, Connecticut plant is not an enamel plant; The National Sanitary Manufacturing Company, Salem, Ohio; the Union Sanitary Manufacturing Company, Noblesville, Indiana; United States Sanitary Manufacturing Company, Monaca, Pennsylvania; L. Wolff Manufac-
2 turing Company, Chicago, Illinois, their Trenton plant is not a sanitary iron works; Wheeling Enameled Iron Company, Wheeling, West Virginia.

Q. Referring further to that Exhibit No. 11, paragraph No. 2, it continues: "At the prices given in the resale sheets for the various zones;" what is meant by the various zones?

A. The territorial divisions of the country.

Q. Of the United States? A. Yes.

Q. The sentence continues: "with full freight allowed on shipments of 200 pounds and over (subject to the freight tariff regulations herein provided for) to the list of cities
3 named in the various zones." Am I correct in stating then that the United States has been divided into 11 territorial zones for the guidance of the jobbers who use the resale price list?

A. Yes, with the following amendments, for the guidance and convenience in knowing what goods cost delivered in their respective cities.

Q. I show you what purports to be a price list under cover entitled "Price List, Edwin L. Wayman, Pittsburg, Licensed Sanitary Enameled Iron Ware, June 1, 1910," and direct your attention to what is page 5 of the white pages, the list of cities in freight zone No. 1. The cities there men-
4 tioned are the jobbing points in Zone No. 1, are they not?

A. Yes.

Q. Will you read the names of cities there stated?

A. I wish to say that this is not a complete book.

Q. This is the book which was issued June 1, 1910, is it not? A. Yes.

Q. When you say complete, you mean it is not complete to date? A. To date.

Q. It was complete on June 1, 1910?

A. It was not complete, but it was as much as I was able to issue at that time. 1

Q. State the name of the cities selected as jobbing points in Zone No. 1 as of June 1, 1910.

A. Anderson, Indiana; Albany, New York; Altoona, Pennsylvania; Bangor, Maine; Bayonne, New Jersey; Boston, Mass.; Bridgeport, Conn.; Brooklyn, N. Y.; Buffalo, N. Y.; Camden, N. J.; Cambridgeport, Mass.; Canton, O.; Cleveland, O.; Columbus, O.; Cumberland, Md.; Davenport, Iowa; Dayton, O.; Detroit, Mich.; Dubuque, Iowa; East Orange, N. J.; Elizabeth, N. J.; Elmira, N. Y.; Fort Wayne, Ind.; Grand Rapids, Mich.; Guttenberg, N. J.; Hampden, 2 Va.; Hartford, Conn., Indianapolis, Ind.; Jersey City, N. J.; Kalamazoo, Mich.; Lancaster, Pa.; Lansing, Mich.; Long Island City, N. Y.; Lynn, Mass.; Manchester, N. H.; Mansfield, O.; Menominee, Mich.; Muncie, Ind.; Newark, N. J.; New Bedford, Mass.; New Haven, Conn.; New Rochelle, N. Y.; New York, N. Y.; Norfolk, Va.; Paterson, N. J.; Peoria, Ill.; Philadelphia, Pa.; Portland, Me.; Providence, R. I.; Richmond, Va.; Rochester, N. Y.; Rockford, Ill.; Rutland, Vt.; Scranton, Pa.; Somerville, Mass.; Springfield, Mass.; St. Louis, Mo.; Syracuse, N. Y.; Terre Haute, Ind.; Toledo, O.; Trenton, 3 N. J.; Troy, N. Y.; Union City, Ind.; Utica, N. Y.; Washington, D. C.; Watertown, N. Y.; Weehawken, N. J.; Wilmington, Del.; Wilkes Barre, Pa.; Worcester, Mass.; Yonkers, N. Y.; York, Pa.

Q. Look now at page 6 and state the jobbing points for Zone No. 2.

A. Atlanta, Ga.; Birmingham, Ala.; Chattanooga, Tenn.; Charleston, S. C.; Columbia, S. C.; Jacksonville, Fla.; Knoxville, Tenn., Little Rock, Ark.; Savannah, Ga.; Memphis, Tenn.; Nashville, Tenn.; New Orleans, La.

Q. Those are the jobbing points used for Zones 1 and 2 4 by the manufacturers who have license arrangements with you?

A. Those are the jobbing points that I have established for Zones 1 and 2.

Q. And that are observed by the manufacturers? A. Yes.

Q. Now, state the jobbing points for Zone 3.

A. Cedar Rapids, Iowa; Davenport, Iowa; Des Moines, Iowa; Dubuque, Iowa; Duluth, Minn.; Fort Dodge, Iowa; Green Bay, Wis.; Kansas City, Mo.; La Crosse, Wis.; Lin-

1 coln, Neb.; Minneapolis, Minn.; Omaha, Neb.; St. Joseph, Mo.; St. Paul, Minn. and Sioux City, Iowa. The towns of Dubuque, Iowa, and Davenport, Iowa, were included in Zone No. 1 through an error.

Q. State the jobbing points for Zone 4.

A. Aberdeen, S. D. and Fargo, S. D.

Q. And for Zone 5.

A. Dallas, Texas; Fort Worth, Texas; Houston, Texas; Oklahoma City, Okla.; San Antonio, Texas; Wichita, Kan.

Q. And for Zone No. 6.

A. Denver, Col. and Pueblo, Col.

2 Q. And for Zone No. 7. A. Salt Lake City, Utah.

Q. Zone 8. A. Butte, Montana.

Q. Zone 9. A. Spokane, Washington.

Q. Zone 10. A. Los Angeles, Cal.; Oakland, Cal.; Portland, Ore.; Sacramento, Cal.; San Diego, Cal.; San Francisco, Cal.; Seattle, Wash.; Tacoma, Wash.

Q. Now, Zone 11. A. Phœnix, Arizona.

Q. Those 11 zones embrace the principal cities of the United States, do they not? A. They do.

Q. Referring again to Exhibit 11, the jobber's license agreement, the last page of that exhibit is attached in such
3 a manner as to be torn off, is it not? A. Yes.

Q. That page is contained in the printed petition on page 56? A. Yes.

Q. Under this licensing arrangement when a licensed manufacturer—by that I mean one who has entered into a licensing arrangement with you—enters into a contract with a jobber, this page of Exhibit 11, having been signed by the manufacturer and jobber is thereupon ma[illegible] to you? A. Yes.

Q. You then have a record of all the contracts made by all 16 of the licensed manufacturers with the several jobbers throughout the United States? A. Yes.

4 Q. And these jobbers are located at all these cities mentioned as jobbing points in the various 11 zones?

A. Yes, and some others.

Q. Then these jobbers are located throughout the United States? A. Yes.

Q. Now, referring to the list of defendants at page 9 of the printed petition, the Standard Sanitary Manufacturing Company, you state, has factories at Allegheny and New Brighton, Pennsylvania, and Louisville, Kentucky? A. Yes.

Q. The Standard has forwarded to you, has it not, then, forms detached from contracts with jobbers such as are found on the jobber's license agreement, which is Petitioner's Exhibit No. 11? A. Yes. 1

Q. These forms are with jobbers situated throughout the United States, are they not? A. Yes.

Q. Could you state that there are such contracts with jobbers situated in every part of the United States? A. No.

Q. In how many of the states of the United States have they entered into contracts with jobbers?

THE WITNESS: Your question had to do with cities named in these zones, and in all of those cities there are not jobbers. 2

Mr. GROSVENOR: I know that.

THE WITNESS: That is what I understood you to say.

Mr. GROSVENOR: Read the question, please.

The stenographer then read the last question.

Mr. GROSVENOR: I am not speaking of cities, but of states.

A. All with the exception of Arizona.

Q. That is to say, these contracts of the Standard Sanitary Manufacturing Company with jobbers are with jobbers in every state except Arizona? 3

A. Yes—just a minute, I will amend that. Did you say this jobber's contract?

Mr. GROSVENOR: The jobber's license contract.

THE WITNESS: You said the Standard Sanitary Manufacturing Company?

Mr. GROSVENOR: Yes.

THE WITNESS: The Standard Sanitary Manufacturing Company and others—

Mr. GROSVENOR: Now, wait a minute, you do not understand me. 4

THE WITNESS: Yes, I do.

Mr. GROSVENOR: I have only asked the question with respect to the Standard Sanitary Manufacturing Company. I will take up the others later.

THE WITNESS: Well, I will change my answer to, I don't know.

Q. In how many states of the United States are there

1 jobbers having contracts with the Standard, the forms of which have been sent to you? A. I don't know.

Q. These forms you keep at your office? A. Yes.

Q. You keep these forms for each one of the 16 licensed manufacturers? A. Yes.

Q. They are all kept in one file? A. No.

Q. They are all kept together, though?

A. In a series of files.

Mr. GROSVENOR: I will ask you to produce at the next session all those forms.

THE WITNESS: With each manufacturer?

2 Mr. GROSVENOR: With each manufacturer.

THE WITNESS: Would a list of names answer the purpose? It will take some time to go through all my files and get those contracts.

Mr. GROSVENOR: If you produce a list of all of them, it will serve the purpose.

THE WITNESS: I don't know offhand with whom each manufacturer has executed the contract, because each manufacturer has not executed the contract with all the jobbers. If that last will answer the purpose, that is all right.

3 Mr. GROSVENOR: Yes, that will do. Your subpœna, paragraph 3, calls for a list of the jobbers who have entered into the contracts with the licensed manufacturers, report of which has been made to E. L. Wayman in accordance with the agreement. Have you produced that list? A. Yes.

The list referred to was then handed to counsel.

THE WITNESS: Those that have executed contracts in that book are checked. These names (indicating the typewritten sheet attached to the book) do not appear in that book, but have executed contracts.

4 Q. Mr. Noble has handed me a small book headed "List of Jobbers of Plumbing Supplies in the United States, July, 1910." In that book are given the names of jobbers situated in the States of Alabama, Arkansas, California, Colorado, Kentucky, Delaware, District of Columbia, Florida, Georgia, Illinois, Iowa, Kansas, Connecticut, Louisiana, Maine, Maryland, Massachusetts, Minnesota, Missouri, Montana, Nebraska, New Hampshire, New York, Ohio, Oklahoma, Pennsylvania, South Carolina, South Dakota, Tennessee,

Texas, Vermont, Virginia, Washington, West Virginia and Wisconsin. Is that correct? A. Yes. 1

Q. He has also handed me a list of jobbers entitled, "Jobbers having signed not in Blue Book," said jobbers being situate in the States of Florida, Illinois, Indiana, Maryland, Massachusetts, Michigan, Minnesota, Missouri, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Tennessee, Texas, West Virginia and California. Is that correct? A. Yes.

Q. In this list of jobbers in the Blue Book there are certain pencil notations opposite certain names. What do they mean? 2

A. Those indicate which jobbers have signed the license agreement with any of the manufacturers.

Q. Please look through this book, consisting of 32 pages, of which 28 give the names of 389 jobbers, and point out such names as have not any checks opposite them.

A. Denver Pump & Plumbing Company, Denver, Col.; Andrew J. Geary, Chicago, Ill.; Illinois Malleable Iron Company, Chicago, Ill.; Kinsey & Mahler Company, Peoria, Ill.; Chandler Pump Company, Cedar Rapids, Iowa; the Fairbanks Company, New Orleans; F. W. Webb Manufacturing Company, Boston; Cambridge Plumbing Supply Company, Cambridgeport, Mass.; New England Plumbing Supply Company, Springfield; Baker Lead Manufacturing Company, Worcester, Mass.; Grand Rapids Supply Company, Grand Rapids; Emerson-Corbin Supply Company, Menominee, Mich.; Duluth Plumbing Supplies Company, Duluth, Minn.; D. M. Gilmor Company, Minneapolis; Western Supply Company, St. Paul; Bayonne Supply Company, Bayonne, N. J.; Ronalds & Johnson Company, Camden, N. J.; American Plumbing Manufacturing Company, Brooklyn; John F. Clark, Brooklyn; Ronalds & Johnson Company, Brooklyn. 3

Q. Is that the same Ronalds & Johnson of Camden?

A. Yes. Frontier Water & Steam Supply Company, Buffalo, N. Y.; Central Plumbers Supply Company, New York City; F. N. DuBois & Company, New York City; Samuel Lederman, New York City; Mayor, Lane & Company, New York City; John A. Murray, New York City; Ronalds & Johnson Company, New York City. 4

Q. Is that the same Ronalds & Johnson twice mentioned?

A. Yes. Edward Smolke & Company, New York City; Columbus Brass Company, Columbus, O.; American Plumb-

1 ers Supply Company, Toledo, O.; Joseph F. Grosswiller Supply Company, Toledo, O.; Ohio Plumbers Supply Company, Toledo; Atlas Supply Company, Muskogee, Oklahoma; C. A. Blessing, Philadelphia; Bridgman Brothers, Philadelphia; Fleck Bros. Company, Philadelphia; Ford & Kendig Company, Philadelphia; Ronalds & Johnson Company—

Q. Is that the same Ronalds & Johnson?

A. Yes. Philadelphia Anchor Sanitary Company, Pittsburg; Bailey-Farrell Manufacturing Company, Pittsburg; Kelly & Jones Company, Pittsburg; Ford & Kendig Company, Scranton, Pennsylvania; O'Malley Manufacturing
2 Company, Scranton; Providence Plumbing Supply Company, Providence; Murphy Supply Company, Green Bay, Wis.; Hobbes Supply Company, Eau Claire, Wis.

Q. How many does that make in this book that have not signed? A. Forty-nine including 4 branches.

Q. Now, will you look at this book and state the number that have check marks opposite them, that is, the number that have signed these jobber's license agreements?

THE WITNESS: May I ask counsel a question about that first?

Mr. GROSVENOR: I don't see why you should con-
3 sult counsel. Just go ahead and count them.

A. My answer is 340 jobbers whose names appear in this book have executed a license agreement, this number being made up of firms who have branches in more than one city. These branches have been included in the number 340.

Q. That is to say some names may have appeared more than once, if they have more than one branch?

A. Yes, if the branches of the company were eliminated and all of the branches considered as one company, this number would be reduced.

4 Q. How much?

A. 61, leaving 279 in book who have signed.

Q. Now, I show you this list of names not in this Blue Book, being as you stated names of jobbers who also have entered into the license agreement with the manufacturers and ask you to state how many are on that list? A. 48.

Q. That makes in all how many jobbers that have entered into the license agreements? A. 388.

Q. Counting the branches, as you have stated? A. Yes.

Q. Now, how many jobbers are there named in the Blue Book who have not entered into a license agreement with any one of the manufacturers? A. Forty-nine. 1

Mr. GROSVENOR: I offer in evidence as "Exhibit No. 30" the Blue Book and the list of jobbers having signed but not in the Blue Book, attached thereto. The pencil marks in the Blue Book as explained by the witness to be made part of the exhibit.

Q. I now direct your attention to provision No. 10 in the jobber's license agreement, which is Exhibit No. 11, reading as follows: "10. The Purchaser also agrees during the life of this contract not to purchase, sell, advertise, solicit orders for, or in any way handle or deal in Sanitary Enameled Iron Ware of any manufacturer not licensed under the Letters Patent enumerated herein, except with the express written permission of the Licensor. Breach of any of the provisions of this agreement, or any failure to maintain and observe prices, rules or regulations shall give the Company, or E. L. Wayman, owner of the Patents hereinbefore enumerated, an option immediately to cancel this contract, all unfilled orders, and to withhold all rebates; and the Purchaser is hereby expressly put on notice that in case of any such failure, he cannot thereafter obtain Sanitary Enameled Iron Ware manufactured under the Letters Patent above enumerated from any of the Licensed Manufacturers." When was that provision first considered? 2 3

A. That provision, part of it, the first part of it, with the exception of the last few lines appearing in paragraph 10 of this jobber's license agreement—three years ago when I first had the matter in mind the last two lines were considered by me the latter part of May, and I definitely decided to insert this provision in the jobber's license agreement about June 2. 4

Q. State once more what part was inserted on June 2, 1910. Just read the words, so that it will be plain.

A. I will amend my former answer to include this addition (reading) "or E. L. Wayman, owner of the Patents hereinbefore enumerated" and the provision (reading) "he cannot thereafter obtain Sanitary Enameled Iron Ware manufactured under the Letters Patent above enumerated from any of the licensed manufacturers."

Q. That is to say, the words which you have just read were inserted after May 6, 1910? A. Yes.

Q. I show you Petitioner's Exhibit No. 10, which is the form of jobber's license agreement which was issued by you to the various manufacturers on March 24. Is that correct?

A. Yes.

Q. You have stated that this form was considered by the various manufacturers who gathered in New York on March 29 and 30? A. In a general way.

Q. I direct your attention to paragraph 9 of that form made Exhibit 10, which reads as follows: "The Purchaser also agrees during the life of this contract not to purchase, sell, advertise, solicit orders for, or in any way handle or deal in Sanitary Enameled Ware of any manufacturer not licensed under the Letters Patent enumerated herein, except with the express written permission of the Licensor. Breach of any of these provisions of this agreement, or any failure to maintain and observe prices, rules or regulations shall give the company the option immediately to cancel this contract and to withhold all rebates; and the Purchaser is hereby expressly put on notice that in case of any such failure he can thereafter obtain Sanitary Enameled Ware manufactured under the Letters Patent above enumerated only at resale prices, without any discount or rebate whatever." At the time of the March 30 meeting it was contemplated, then, was it not, that jobbers who signed the license agreement should be allowed to sell to jobbers who had not, but that the sale should be made at resale prices?

A. It was contemplated on my part.

Q. On your part? A. Yes.

Q. That was inserted in paragraph 9? A. Yes.

Q. Which became paragraph 10? A. Yes.

Q. That provision allowing a jobber to sell, but at resale prices, to jobbers who did not sign, was afterwards changed so that it now reads that jobbers who signed could not sell to jobbers who did not sign?

A. No, that is not correct.

Q. Well, state what is correct.

A. This refers to the manufacturers, and not from the jobbers to other jobbers. This refers to manufacturers to jobbers.

Mr. NOBLE: Is the witness referring to paragraph 10 of Petitioner's Exhibit 11? 1

THE WITNESS: Yes.

Q. Look at paragraph 10, please, that says "the Purchaser," does it not? A. Yes, and that is the jobber.

Q. (Reading): "The Purchaser also agrees during the life of this contract not to purchase, sell, advertise, solicit orders for, or in any way handle or deal in Sanitary Enameled Iron Ware of any manufacturer not licensed under the Letters Patent enumerated herein, except with the express written permission of the Licensor." A. Yes.

Q. In case he did, what happened under the provisions of Section 10? 2

A. The manufacturer may cancel the contract or I may cancel the contract.

Q. Either? A. Yes.

Q. I will now ask you to look at Exhibit No. 9, which is the license agreement entered into by the licensed manufacturers with you, and direct your attention to the second paragraph of the paragraph numbered 6, which reads: "All terms and conditions relative to prices and discounts now established by the Licensor and set forth in the annexed schedules and made a part hereof, shall remain in force and effect," and so forth. Those annexed schedules were not produced with the original contracts, were they? 3

Mr. NOBLE: Do you mean yesterday?

Mr. GROSVENOR: Yes.

A. I am trying to grasp what you want.

Q. Well, what is meant by the term "annexed schedules and made a part hereof"?

A. The jobber's license agreement.

Q. And what else? A. That is all.

Q. And the resale price-list? 4

A. Yes, and the resale price list.

Q. In other words, the jobber's license agreement entered into by the manufacturers and the different jobbers, and the resale price list which the jobbers then follow in making their sales, are considered a part of this contract? A. Yes.

Q. That is of this Exhibit No. 9, being the license agreement between the manufacturers and you?

A. Yes, and also, it offers a latitude in this respect, that

1 it was not necessary for me to produce at that time the price-list, as all prices, conditions or regulations are subject to change automatically by the terms of the agreement.

Q. And they can be changed by the Commission and you? A. By me.

Q. With the Commission's consent? A. Yes.

Q. And not without the Commission's consent?

A. Conditions or regulations may be changed without the Commission's consent.

Q. Can prices be changed without the Commission's consent? A. No.

2 Q. Can discounts be changed without the Commission's consent? A. Not in so far as they relate to prices.

Q. Can the differentials of the different manufacturers be changed without the Commission's consent? A. No.

Q. At the time of the meeting, then, on May 6 in New York City, there were attached to these license agreements which were to be entered into between you and the manufacturers, and considered a part of those agreements, these proposed jobber's agreements with the proposed price list, although that price list had not yet been prepared in final form? A. Yes.

3 Q. Going back to the description of the business about which you testified yesterday, what material are most of the bathtubs made from—I mean, are they tin or sanitary iron ware or copper?

A. The principal component is cast iron.

Q. No, what kind of bathtub is sold most extensively in the United States? A. The tub known as the—

Q. No, is it the porcelain enameled tub, such as is manufactured by these manufacturers, or is it a tin tub or one made of copper? A. Porcelain enameled iron.

Q. That is, such as is made by these manufacturers?

A. Yes.

4

Q. Is that more durable than the tin? A. Yes.

Q. Is it less expensive than the porcelain? A. Yes.

Q. What is the average cost of the solid porcelain tub?

A. I should say from about $25 up to four or five hundred dollars.

Q. It is then a very expensive tub? A. Yes.

Q. Its use is comparatively infrequent as compared with the porcelain enameled tub? A. The use heretofore—

Mr. GROSVENOR: Just answer that question, please. 1

THE WITNESS: I want to answer it.

Mr. GROSVENOR: Read it again.

THE WITNESS: In my answer I want to explain what I mean.

The stenographer then read the last question.

A. The proportion is considerably smaller than that of the porcelain enameled iron tub.

Q. Of what other material are bathtubs made—tin?

A. Copper and—

Q. Tin? A. Yes. 2

Q. Are those very durable? A. No.

Q. They do not compare in service and durability with the porcelain enameled iron tub? A. No.

Q. Now, dealing with lavatories, most of the lavatories used in this country are made of what?

A. Solid porcelain, vitreous china or enameled iron.

Q. Of which is there the most extensive sale?

A. I believe enameled iron, but the sale of vitreous china and solid porcelain lavatories has greatly increased in the last few years.

Q. Which is the most expensive of those three kinds? 3

A. I don't know, I believe they are very close together in price; the solid porcelain, possibly, being a trifle higher.

Q. What is the material of which kitchen sinks are generally made? A. Cast iron or steel.

Q. Do you mean by cast iron the porcelain?

A. Yes, porcelain cast iron or porcelain steel, or solid porcelain.

Q. Will you please look at Petitioner's Exhibit No. 2, being the resolution of March 30, 1910, made Exhibit 1 of the petition; that refers to the appointment of that special committee, which you testified yesterday was elected by ballot at the meeting on March 30? A. Yes. 4

Q. Did you consider yourself a member of that committee? A. No, it was appointed—

Q. You met with the committee at Mount Clemens, Michigan? A. Yes.

Q. Were you present at their meetings? A. Yes.

Q. Did you participate in the discussion? A. Yes.

Q. Did you act as secretary of the meeting?

A. I kept minutes, memorandums.

1 Q. Did you retain a copy of those minutes? A. No.

Q. Did you make copies of the minutes?

A. I made them at the time.

Q. Did you preserve those copies? A. No.

Q. Have you any memorandum showing what was discussed at the meeting? A. No.

Q. Have you any letters to or from manufacturers stating what was being discussed at the meeting? A. Yes.

Q. Have you them now? A. No.

Q. Have you anything to show what transpired at the meeting? A. No, all I can recall is from memory.

2 Q. This resolution states "the Committee shall interview the various manufacturers, obtaining their consent as evidenced by their signatures to the above mentioned agreements." Did that committee interview various manufacturers? A. Several.

Q. Did you go with them? A. Yes.

Q. Whom did they interview?

A. Mr. F. G. Borden of the National Sanitary Manufacturing Company.

Q. Did you go with the committee at that time?

A. I was present at the interview.

Q. Who was present also? A. The full committee.

3 Q. Consisting of?

A. Mr. Hoelscher, Mr. Cline, Mr. Gates, Mr. Barnes and Mr. Torrance.

Q. Where was that meeting? A. At Mount Clemens.

Q. These various manufacturers, then, some of them, came to Mount Clemens to see the committee? A. Yes.

Q. Did they obtain Mr. Borden's agreement to go into the licensing plan?

A. They, in connection with myself, did, yes.

Q. He met you all together? A. Yes.

Q. And discussed the points of difference between him

4 and the committee?

A. I believe there were no points of difference between him and the committee.

Q. What did he go out for, then?

A. It was necessary to make some rearrangement of the schedules, as I explained before.

Q. Any discussion as to what preferentials should be allowed the National Sanitary Manufacturing Company?

A. As I remember it, I asked him if he would be satis-

fied with certain differentials and he said it was agreeable, 1
or words to that effect.

Q. Was the committee present when you asked him?

A. Yes.

Q. And he addressed his assent to the committee as well as to you? A. He addressed it to those assembled.

Q. Continuing with this Exhibit No. 2 introduced yesterday, it says: "And when the consent of 85 per cent. of the production is had, the agreements shall become binding and effective." That is 85 per cent. of the production of what? A. Of the principal companies in the business.

Q. In what business? 2

A. The Sanitary Enameled Iron Ware Business.

Q. That is when the consent of companies controlling 85 per cent. of the output of sanitary enameled iron ware was obtained? A. Approximately.

Q. Then the agreements should become binding and effective?

A. That is the wording of this, but that in effect was not carried out.

Q. In what respect?

A. Because when these license agreements were executed they did not represent 85 per cent. of the production, as near as I was able to estimate it. 3

Q. You mean when the license agreements were executed in May, on the 6th? A. Yes.

Q. What per cent. did they control? A. I don't know.

Q. You said as near as you estimated they did not control 85 per cent.? A. Yes.

Q. Then, what did they control?

A. From estimates made since, it amounts to about 80 per cent. of furnaces; that 80 per cent., however, does not represent production as far as volume of business is considered in dollars and cents.

Q. Now, I wish you would produce a list showing the 4
names of the corporation defendants, that is to say, the licensed manufacturers, the 16 of them, showing the number of furnaces owned by each and the number of furnaces operated by each during the period of this license agreement, as far as you can ascertain from the reports which those defendants have made to you?

A. I am having those reports prepared for you now.

Q. Thank you. Now, continuing with this exhibit:

"The Committee is authorized to levy a special assessment equal to the amount of one-quarter's dues as now paid into the association." What committee is meant there?

A. The committee representing the manufacturers.

Q. To be elected?

A. To be elected and to deal with me in working out the details of this license agreement.

Q. The dues referred to are dues in what association?

A. The Sanitary Enameled Ware Association; that expression there is simply used as a means of calculation.

Q. How many members were there of the Association at that time? A. Nineteen, as I recall.

Q. This sentence, then, contemplates that a levy should be made on each of the nineteen to pay the expenses of getting up this arrangement?

Mr. NOBLE: I object to that question. It seems to me the instrument speaks for itself on that point.

A. No.

Q. I will read the next sentence of the exhibit: "The proceeds of said special assessment to be used for the purpose of defraying the necessary expenses incurred in carrying into effect the object for which this convention was called." Now, was this levy made? A. Yes.

Q. To whom was it paid? A. To me.

Q. Did you use it? A. I used it for the committee.

Q. Of course, I meant for the committee. A. Yes.

Q. Did you draw upon it for your expenses at this time in going from city to city about this matter of license arrangement? A. No.

Q. Did you use it to pay any counsel fees? A. No.

Q. What was it used for?

A. Expenses of the committee exclusively.

Q. That is, the committee at Mount Clemens? A. Yes.

Q. That is to say these gentlemen, Mr. Torrance and Mr. Hoelscher and Mr. Cline and Gates and Barnes had their expenses at Mount Clemens paid out of this assessment? A. Yes, as representing the other manufacturers.

Q. All of the manufacturers? A. Yes.

Q. But none of it went to pay your expenses? A. No.

Q. You were at this time the Commissioner of the association referred to? A. Yes.

Q. You drew a salary as such Commissioner? A. Yes.

Q. How much was that salary? A. $4,000 per year. 1

Q. How was that salary paid? A. I paid myself.

Q. You do not understand my question: These 19 members were assessed certain dues? A. Yes.

Q. Wasn't your salary paid out of that sum which resulted from this assessment?

A. From the assessment as made, which applied to the regular business of the Sanitary Enameled Ware Association.

Q. Where did the $4,000 which was your salary come from? A. From the manufacturers.

Q. From each of these 19 manufacturers? 2

A. Yes, sir; in part.

Q. That is to say a part from each? A. Yes.

Q. Were you allowed traveling expenses? A. Yes.

Q. For what purposes?

A. For the purposes of visiting the manufacturers in the association.

Q. Well, when you went to see them about this licensing arrangement, did you pay always your own expenses?

A. I paid always my own expenses on anything connected with this licensing proposition. I conducted that as a separate matter. 3

Q. But the expenses of this committee at Mount Clemens, you have stated, were paid out of this special assessment? A. Yes.

Q. From the 19 members? A. Yes.

Q. I now direct your attention to Exhibit 4, which you will find in the petition as Exhibit 2, at page 26; that resolution was passed, you say, March 29? A. Yes.

Q. The day prior to the passing of the resolution referring to the price and schedule committee? A. Yes.

Q. That resolution says: "Whereas a proposition is pending for a license agreement and a resale price for the benefit of the jobbing trade," the license agreement referred to there, I take it, was the one about which there had been that March meeting—about March 2, I believe you said—at which you said you and Mr. Torrance were present? A. Yes. 4

Q. And the license agreement in respect to which you drew up the memorandum agreement? A. Yes.

Q. Made Exhibit 3? A. Yes.

Q. The resale price there mentioned has reference to

1 the system of resale prices subsequently adopted and embodied in the price list, and part of which is made Exhibit 11 of the petition? A. Yes.

Q. That exhibit continues: "Whereas long term contracts are a menace to said proposition;" what is meant by "long term contracts"? A. Any future delivery orders.

Q. "Are a menace to said proposition"; what proposition, the proposed license agreement?

A. The proposed license agreement.

Q. The resolution continues: "We, the undersigned, manufacturers of enameled ware, hereby agree to take no
2 orders for delivery beyond May 31, 1910. This agreement is not binding upon the signers unless all members of the Enameled Ware Manufacturers' Association are parties thereto and append their signatures." They then signed their names that day? A. Yes.

Q. One after the other? A. Yes.

Q. In the presence of each other?

A. Yes, all of which invalidates the whole matter, the very reading of it, and the signatures.

Q. What do you mean by that?

A. This says: "This agreement is not binding upon the signers unless all members of the Enameled Ware Manu-
3 facturers' Association are parties thereto and append their signatures."

Q. And some of them did not sign? A. No.

Q. So it was not binding? A. No.

Q. As a matter of fact, can you state that they did not live up to that resolution? A. Yes.

Q. Now, do you say they did not or did?

A. They did not entirely live up to that resolution.

Q. Who did not? A. All of them.

Q. Which ones? A. I should say all of them.

Q. In what respect did they not live up to it?

4 A. The fact that the orders they had on their books were orders which had been taken and could not be delivered by that time.

Q. You mean, then, the orders which they had on their books they carried out? A. Yes.

Q. I direct your attention to the third sentence of that resolution which says: "We, the undersigned, manufacturers of enameled ware, hereby agree to take no orders

for delivery beyond May 31, 1910." That does not refer to orders on the books? A. No. 1

Q. Do you still maintain that that resolution was not followed? A. Yes.

Q. In what respect?

A. In this respect, that orders that were taken subject to delivery—

Q. (Interrupting): Do you mean taken afterwards?

A. Taken afterwards, subject to delivery by May 31, were not carried out precisely owing to the fact that it was not possible for some of the jobbers to take the goods into their places and some were extended beyond the 31st. 2

Q. But all those orders on their books were for delivery prior to May 31?

A. Yes, and in so far as I know, none of the manufacturers have willingly extended the delivery of their orders beyond a reasonable time.

Q. Do you know of any one of the licensed manufacturers receiving or accepting, after March 30, 1910, any order for delivery beyond May 31, 1910?

A. Not positively.

Q. Do you think some of them did? A. Yes.

Q. Which? 3

A. That would be hardly fair to state, because I am not certain.

Q. As far as your information goes, then, they all observed that agreement?

A. That is not quite a fair question.

Q. Going back to that meeting of March 29 and 30, was any attorney present at either meeting? A. Yes.

Q. At which meeting? A. March 29.

Q. What attorney? A. Mr. Jackson.

Q. Give his full name?

A. Edwin E. Jackson, of Noble, Jackson & Hubbard, New York City. 4

Q. Were all the manufacturers present?

A. Most of them were.

Q. Did he make an address or talk to them on the subject of this license agreement? A. Yes.

Q. He went over the details with them? A. Yes.

Q. For what purpose?

A. For the purpose of emphasizing what I had said to them. I asked him to come there.

1 Q. You had been to these several manufacturers, or many of them, suggesting the licensing arrangement to them? A. Yes.

Q. Had some of them intimated to you or stated to you that in their opinion such an arrangement was unlawful?

A. In so far as their State laws were concerned.

Q. They thought it might be illegal? A. Yes.

Q. Had any of them suggested that it might be contrary to the terms of the Sherman Anti-Trust Act? A. Yes.

Q. Was the purpose of Mr. Jackson's address to show them that it was not in violation of the Sherman Act?

A. No.

2 Q. Did he touch on the legal aspects of the case?

A. Yes.

Q. Did he say that it was perfectly lawful? A. Yes.

Mr. GROSVENOR: I will ask you to produce the original copy of Exhibit No. 4 in the petition, it being a letter dated April 16, 1910, with the name Edwin L. Wayman, 1309 Arrott Building, Pittsburg, April 16, 1910.

Mr. NOBLE: We haven't the original copy of that, Mr. Grosvenor, but Mr. Wayman informs us that

3 the copy in the petition, as he remembers it, is correct.

Mr. GROSVENOR: All right.

Q. I show you a paper and ask you if this paper, without the pencil marks, is a copy of Exhibit 4 of the petition?

A. I believe that is correct.

Mr. GROSVENOR: I offer in evidence, as "Petitioner's Exhibit No. 31," a paper consisting of three typewritten sheets, the first two being the letter, and the third sheet being a page beginning "The following 'preferential discounts' from the selling prices

4 established by the Licensor will be allowed the various manufacturers on sales to jobbers only." Then follows the list of discounts.

The paper referred to was then marked and filed as "Petitioner's Exhibit No. 31."

Q. This Petitioner's Exhibit No. 31 was a circular letter issued by you to the various manufacturers of sanitary enameled iron ware, am I correct? A. Yes.

Q. You sent copies of it to all the manufacturers of sanitary enameled iron ware? 1

A. In so far as I remember.

Q. You sent copies to Kohler, Blairsville, Iron City, Clymer and Lipp? A. No.

Q. To the first four? A. With the exception of Lipp.

Q. You did send them to the others?

A. Yes, I think so.

Q. You sent it then to all the manufacturers named on the third page of the exhibit in the column of names of manufacturers?

A. Yes, on page 34 of the petition.

Q. Is that right? A. Yes. 2

Q. This letter was issued on the date stated on the letter, April 16? A. I presume it was, yes.

Q. I will read parts of that exhibit (reading): "The price and schedule committee created at the meeting held in New York City, for the purpose of concluding the license and resale agreements, have just completed a special session held at Mount Clemens, Michigan, beginning April 8, and ending April 14"; that is the committee meeting to which we have referred so often? A. Yes.

Q. The dates there given are accurate for the dates of the meeting? 3

A. I am not sure about that, but they are approximately correct.

Q. (Continuing): "All the details of the license agreement and jobber's agreement were thoroughly gone into and considered, every paragraph being carefully weighed; the committee making such additions or eliminations as they considered advisable." The committee referred to there consisted of Mr. Torrance, Mr. Hoelscher, Mr. Gates, Mr. Barnes and Mr. Cline? A. Yes.

Q. (Continuing): "Some changes were made in the arrangement of the schedules as you will note by the attached copy as well as some changes in the differentials." By the differentials you mean the special discounts you allowed certain manufacturers to make? A. Yes. 4

Q. Those differentials are also enumerated at the end of the exhibit and printed on page 34 of the petition? A. Yes

Q. (Continuing): "All members"—members of what?

A. That refers to the manufacturers.

Q. (Continuing): "All members who had suggestions

1 to make or those whom the committee desired to see, appeared before them"; now, what manufacturers appeared before the committee?

A. Mr. F. G. Borden of the National Sanitary Manufacturing Company; Mr. Anton Weiskittel of A. Weiskittel & Son Company; Mr. A. G. Ward of the Day-Ward Company; Mr. C. E. Gates of the Union Sanitary Manufacturing Company; Mr. Kenney, of the Humphryes Manufacturing Company. That is all I recall.

Examination Suspended.

2

At this point the hearing was adjourned until 1:45 p. m.

After Recess.

EDWIN L. WAYMAN, resumed the stand for continuation of direct examination, and testified as follows:

DIRECT EXAMINATION BY MR. GROSVENOR (continued):

I will continue with Exhibit No. 31, which is Exhibit 4 of the petition. (Reading): "All members who had sug-
3 gestions to make or those whom the committee desired to see, appeared before them, and after going into all details and bringing up every possible question they went away entirely satisfied after having presented the committee with letters, several of which are given below." The next paragraph, I take it, is taken from a letter received by you or the committee from one of these manufacturers who had attended?

A. Yes, the next two paragraphs—these two paragraphs quoted here (indicating) I noticed were presented to the committee through error, and I called attention to that
4 after I had noticed it, and the agreements that were made should have been made with me, and most of them were. I believe through error one or two of these agreements were addressed to the chairman of the committee or the committee. The balance of them, as soon as I noticed it, were addressed to me.

Q. Who drew up the letters referred to?

A. Why, the party dictating that letter.

Q. I show you a paper purporting to be a letter dated

April 11, 1910, on the letterhead of the Colonial Hotel, 1
Mount Clemens, Michigan, signed "The Day-Ward Company, by A. G. Ward, V. P.," and ask you if that is a letter written at the time? A. Yes.

Q. That is addressed to H. M. Hoelscher, chairman?

A. Yes, sir; that is what I say; that was addressed to him but should have been addressed to me, as the agreement was with me.

Q. I will read this letter: "Mr. H. M. Hoelscher, chairman, Colonial Hotel, Mount Clemens, Michigan. April 11, 1910, My dear Sir: After having met with the committee and gone into the matter very carefully, we have given it 2
due consideration and in the matter of harmony we will waive all demands which we made in our previous letter as to schedule, and will agree to manufacture all ware which we make under one of the three dredger patents, and we will also agree to the schedule of differentials in prices as submitted by your committee, and trust that our action will enable you to harmonize other interests." That part "and we will also agree to the schedule of differentials" refers to the differentials allowed to the different manufacturers?

A. No, to the differentials allowed to his company.

Q. What does he mean by saying: "to harmonize other 3
interests."

THE WITNESS: Whose letter are you reading there?

Mr. GROSVENOR: This is Mr. Ward's letter.

A. Why, as near as I can recall, he wanted larger differentials than he finally agreed to accept.

Q. You mean special discounts which he could allow below the Standard Sanitary prices?

A. No, below whatever regular prices might be allowed.

Q. And he wanted to be allowed to make a larger differential? A. Yes. 4

Q. Now go on.

Q. What he meant, as I take it, was that he hoped that his action would aid or assist in harmonizing other interests, that is, that it would undoubtedly convince other manufacturers that they should not ask for larger differentials than they were really entitled to.

Q. That is, if he accepted a lower differential he hoped it would persuade others to accept a lower differential, is that it? A. Yes, sir.

1 Q. There was, then, a discussion at this meeting as to what differentials should be allowed the different manufacturers? A. Yes.

Mr. GROSVENOR: I offer that letter in evidence as "Petitioner's Exhibit No. 32."

The letter referred to was then marked and filed as "Petitioner's Exhibit No. 32."

Q. I show you another letter on the letterhead of the same hotel addressed to Mr. Hoelscher and signed "C. E. Gates, V. P. and Mngr., Union Sanitary Manufacturing
2 Company, Noblesville, Indiana," and ask you if that was a letter presented at the same time? A. Yes.

Q. Had there been a discussion with the Union Sanitary Manufacturing Company as represented by Mr. C. E. Gates as to what differential should be allowed that company?

A. As I recall Mr. Gates' visit, there was practically no discussion; he thought the differentials were about right for his company.

Q. Did he go over the matter before the committee?

A. Not in detail.

Q. At all these committee meetings you were present?
3 A. Yes, sir.

Mr. GROSVENOR: I offer this letter in evidence as "Petitioner's Exhibit No. 33."

The letter referred to was then marked and filed as "Petitioner's Exhibit No. 33."

It reads as follows:

"April Eleventh, Nineteen ten.

Mr. H. M. Hoelscher, Chairman,
Colonial Hotel,
4 Mt. Clemens, Mich.

My dear sir:—

After meeting with your Committee and having gone over in detail all of the matters under consideration, we hereby agree to manufacture all our ware under the standard Dredger patents, and also agree

to the schedule of differentials in prices as submitted to me by your Committee. 1

Very truly yours,
C. E. Gates, V. P. & Mngr.
Union Sanitary Mfg. Co.
Noblesville, Ind."

Q. I show you another letter on the letterhead of the same hotel, addressed to Mr. H. M. Hoelscher, Chairman, dated April 12, 1910, and signed "National Sanitary Manufacturing Company, F. G. Borden, President." I ask you if that letter was presented to the committee on the date indicated? A. Yes, sir. 2

Q. Had that company as represented by Mr. Borden discussed the subject of differentials with the committee?

A. I do not recall, but if at all, very little, because Mr. Borden—as I remember it—was perfectly satisfied with the differential as presented.

Mr. GROSVENOR: I offer in evidence the letter dated April 12, just referred to, as "Petitioner's Exhibit No. 34."

The letter referred to was then marked and filed as "Petitioner's Exhibit No. 34." 3

It reads as follows:

"April Twelfth, Nineteen Ten.

Mr. H. M. Hoelscher, Chairman,
Colonial Hotel,
Mt. Clemens, Mich.

Dear sir:—

The meeting with your Price and Schedule Committee has been entirely satisfactory to the National Sanitary Company, we agreeing to the Schedule of differentials as presented, also to work under the Standard Dredger Patents. 4

We also wish to compliment the Committee on the progress made and fully hope that the Meeting will close at an early date with your efforts appreciated by all and a satisfactory ending.

Yours very truly,
National Sanitary Mfg. Co.
F. G. Borden, Pres."

Q. I show you a letter on the letterhead of the Colonial Hotel to Mr. E. L. Wayman, under date of April 12, 1910, and signed by the Humphryes Manufacturing Company, by H. D. Kenney. That letter is on the letterhead of Edwin L. Wayman, but it is headed, "Colonial Hotel," and I ask you if that was also presented on the date indicated?

A. Yes, sir.

Mr. GROSVENOR: I offer that letter as "Petitioner's Exhibit No. 35."

The letter referred to was then marked and filed as "Petitioner's Exhibit No. 35."

It reads as follows:

"Colonial Hotel,
Mt. Clemens, Mich.

April 12th, 1910.

Mr. E. L. Wayman,
Pittsburg, Pa.

Dear Sir:—

We hereby accept your proposition as to a License Agreement under U. S. Patent No. 633,941, granted to James Arrott Sept. 26th, 1899, by which we are permitted to use said Patent and for the use of which we agree to pay you as per terms of said License Agreement at the rate of $5.00 per day per furnace in operation; less such rebate that you may hereafter decide upon; it being understood that all Licenses shall be upon the same uniform schedule of Prices per furnace and the same uniform charge and rebate.

We further agree to maintain any and all stipulations and provisions set forth in the Schedules and also to the differentials established for our Company as shown in the attached sheet.

(signed) Humphryes Mfg. Co.
By H. D. Kenney."

Q. I show you another letter dated April 13, 1910, on the letterhead of the Colonial Hotel, addressed to you and signed by A. Weiskittel & Son Company, by Anton Weiskittel, and ask you if that letter was presented on the day indicated? A. Yes, sir.

Mr. GROSVENOR: I offer that letter in evidence as "Petitioner's Exhibit No. 36." 1

The letter referred to was then marked and filed as "Petitioner's Exhibit No. 36."

It reads as follows:

"April thirteenth, Nineteen Ten.

Mr. E. L. Wayman,
Pittsburg, Pa.

Dear sir:—

We hereby accept your proposition as to a License Agreement under Dredger Patents by which we are permitted to use said Patents and for the use of which we agree to pay you as per terms of said License Agreement at the rate of $5.00 per day per furnace in operation, less such rebate that you may hereafter decide upon; it being understood that all Licenses shall be upon the same uniform schedule of prices per furnace and the same uniform charge and rebate. 2

We further agree to maintain any and all stipulations and provisions set forth in the Schedules and also to the differentials established for our Company as shown in the attached sheet. 3

(signed) A. W. Weiskittel & Son Co.
By Anton Weiskittel."

Q. I show you four letters written on the letterheads of E. L. Wayman, 1509 Arrott Building, Pittsburg, and addressed to you, three of which are dated April 19, and one April 21, and they are signed respectively by the Wheeling Enameled Iron Company, by J. E. Wright, President; McVay & Walker per A. C. Walker; Kerner Manufacturing Company, H. J. Frauenheim, and J. L. Mott Iron Works, E. Hammann, and ask you if those were presented to you on the dates indicated? A. Yes. 4

Q. And those are the signatures of the companies or individuals whose names appear thereon? A. Yes.

Mr. GROSVENOR: I offer those in evidence as "Petitioner's Exhibits Nos. 37, 38, 39 and 40 respectively.

The letters referred to were then marked and filed

1 as "Petitioner's Exhibits Nos. 37, 38, 39 and 40" respectively.

Q. Did any of these gentlemen appear before the committee?

A. The Kerner Manufacturing Company, McVay & Walker, the Wheeling Enameled Iron Company appeared before part of the committee in Pittsburg on the dates indicated.

Q. Did they appear by the individuals who signed these several letters? A. Yes.

Q. Now, taking up that special meeting at Pittsburg,
2 who was present for the committee at that meeting?

A. As I recall, A. H. Cline, jr., of the United States Sanitary Manufacturing Company; Francis J. Torrance of the Standard Sanitary Manufacturing Company, and I think, T. R. Barnes of the Barnes Manufacturing Company, but I am not positive about the last party.

Q. The other members of the committee were absent?

A. They were not there.

Q. Where was the meeting held? A. In my office.

Q. Where did E. Hammann sign on April 21?

A. At the Manhattan Hotel.

3 Q. Did he appear before the committee there?

A. Before part of the committee.

Q. Who constituted part of the committee?

A. As I remember—I am not positive about this—

Q. State to the best of your recollection.

A. To the best of my recollection there was Mr. Gates, of the McCrum-Howell Company and Mr. Cline of the United States Sanitary Manufacturing Company; that is all I remember being there.

Q. Returning again to the Exhibit No. 31, it being the circular letter attached to the petition as Exhibit 4, and
4 issued by you on April 16, I will read the last paragraph: "The committee will hold additional meetings Tuesday, April 19, at Pittsburg, and Thursday, April 21, at New York City, which meetings it is believed will finish all the preliminaries." Those are the meetings to which you have just referred, are they not? A. Yes.

Q. At which these other letters were presented? A. Yes.

Q. (Reading): "You may, therefore, expect to receive a notice calling a general meeting to be held in New York

City during the first week in May for the purpose of executing the final license agreement papers, which will put this and the resale proposition into effect on June 1, which date is being expected and insisted upon by the jobbers throughout the country. The papers you will be asked to sign at this meeting will not be subject to any further changes." At that time, then, that is on April 16, the licensing arrangement had been practically determined upon? 1

A. The manufacturer's license agreement.

Q. Had been determined upon?

A. Yes, that is, the wording of it.

Q. (Continuing): "They embrace the best suggestions made to the committee, have been passed on by the best legal talent in the country and it will not be feasible to make any additional changes in order to meet the ideas of the attorneys of the individual companies. Will you, therefore, come prepared to sign or bring such principals with you that have authority to conclude the matter?" And then follow the preferential discounts to be allowed the various manufacturers on sales to jobbers only. The last sentence of that which appears in the circular letter is underlined and reads as follows: "All makes of goods shall be sold to the plumber at the resale prices that may be established in the sheets." That refers to the sales by the jobber to the plumber? A. Yes. 2 3

Q. The plumber is known in the trade as the last distributor before the user? A. Yes.

Q. The plumber puts the article in the house? A. Yes.

Q. The jobber sells to the plumber? A. Yes.

Q. The resale prices are those which were to be set out in the price list? A. Yes.

Q. Which you were to issue? A. Yes.

Q. This price list which Mr. Noble has handed to me is the price list which is now in force? A. Yes. 4

Q. Will you kindly produce a copy of this that I may offer it in evidence? A. Yes.

Q. There have been changes made in this since it first went into effect on June 1, is that right? A. Yes.

Q. I show you a book entitled "Price List, Edwin L. Wayman, Pittsburg." Is that the price list which was first enforced?

A. I should say it was, without examining it closely.

Q. Well, please examine it.

A. That is, as far as I can identify it, correct. I will say that all sheets dated June 1 are those that were in effect at that time.

Q. Well, just look through this and see if there are any sheets not dated June 1 or which do not belong to it.

A. I should say that was it.

Q. Will you look at Exhibit 10 of the petition and state whether that Exhibit No. 10 is taken from the first pages of this price list.

A. I would say that the information contained on the first page of the price list is similar to that contained in Exhibit No. 10 shown on page 57 of the petition.

Q. This price list, Mr. Wayman, is the price list which we have previously referred to and is considered a part of the general licensing arrangement which the manufacturers and jobbers are to observe? A. Yes.

Q. It is a part of the papers referred to in the manufacturer's license agreement with you? A. Yes.

Q. And also the prices referred to in the jobber's license agreement? A. Yes.

Q. This price list is whose property? A. My property.

Q. This price list is used by all the jobbers whose names appear as checked in this Blue Book, Exhibit No. 30, and on the list attached thereto, is it not?

A. Yes, and in addition by the manufacturers and jobbers whose names are not checked.

Q. I will read from that "To licensed jobbers' salesmen: June 1, 1910. This price list is the property of E. L. Wayman, Arrott Building, Pittsburg, and is loaned to you with the understanding that it is subject to recall at any time. The prices given herein are the selling prices I have established to plumbers on sanitary enameled iron ware manufactured by the following companies, operating under patents owned by me and to whom I have granted licenses." When you say, "are the selling prices I have established to plumbers" you mean they are the selling prices which the jobbers are to quote to customers? A. Yes.

Q. Then follow the names of the 16 manufacturers who made the arrangement with you; then follows "it is necessary for all licensed manufacturers to sell their product manufactured in accordance with these patents on the terms herein established"; this was a letter addressed to the licensed jobbers' salesmen, was it not? A. Yes.

Q. And contains the instructions which they are to follow in observing the agreements of the jobbers with the manufacturers? A. Yes. 1

Q. (Continuing): "And you are hereby notified that the license agreements executed by your company obligates it to resell the various license products at no better prices, terms or other regulations than herein established. As changes, additions or eliminations occur, new sheets will be issued promptly." By that you mean changes in prices, do you not?

A. Changes in prices or changes in grouping or goods on which there were not established prices. 2

Q. By that do you mean new shapes or forms?

A. No, goods being manufactured at the time but on which I had not placed any price; or by "eliminations" is meant should I remove the selling conditions on any particular article or eliminate that article from the market.

Q. This is all in pursuance to the conditions contained in the jobber's license agreement and the manufacturer's license agreement?

THE WITNESS: I don't understand that.

Q. These changes could be made only in accordance with the terms of those two printed contracts which we have already produced in evidence, the manufacturer's license agreement and the jobber's license agreement? 3

A. Yes, those agreements provide for changes from time to time.

Q. These changes can only be made as provided in those agreements?

A. Some of these changes can be made only under the provisions named in the license agreements; other changes can be made at my option.

Q. Referring to the license agreements, Exhibit No. 9, which provides in paragraph 6, in the second section, "all terms and conditions relative to prices and discounts now established by the Licensor and set forth in the annexed schedules and made a part hereof, shall remain in force and effect until other terms, conditions and preferential discounts are substituted therefor by the Licensor, which substitution can only be made by him with the approval of a majority of the members of the Commission, hereinbefore prescribed." Now, in this price list, any change in 4

1 price which is made would go out on a new sheet? A. Yes.

Q. Which you issue to the different jobbers? A. Yes.

Q. That change in price has to be made, as provided in this manufacturer's agreement, with the approval of the majority of the Commission?

A. In answering that I wish to say that I have interpreted that paragraph very liberally. Possibly 95 per cent. of the changes I have made I have not consulted the Commission at all. Most of the changes in prices were due to errors, either in figuring, compiling or grouping the various products.

2 Q. The changes, then, so far made, have been comparatively unimportant? A. Well, yes.

Q. That is, since June 1? A. Yes.

Q. Any radical changes in prices could you enforce without the approval of the committee?

A. I probably could, but I have not done so.

Q. You have not done so? A. No.

Mr. GROSVENOR: I offer in evidence this price list containing 276 printed pages and entitled, "Price List, Edwin L. Wayman, Pittsburg, Licensed Sanitary Enameled Iron Ware, June 1, 1910," as "Petitioner's Exhibit No. 41."

3 Price list referred to was then marked and filed as "Petitioner's Exhibit No. 41."

Q. Now, in Exhibit 41 on page 2 of the white pages there are stated certain general conditions; those are general conditions which govern the jobbers in their sales to plumbers, is that right?

A. And manufacturers in sales to jobbers.

Q. That is, they govern the disposition of the bathtub from the time it leaves the manufacturer until it comes into the possession of the plumber, is that right? A. Yes, sir.

4 Q. I will read this sentence: "The ware covered by the price sheets shall be invoiced by individual items, fixtures to be billed separately (less all fittings) and it is not permissible to bill collectively several articles in a 'lump sum.'" Give me a concrete instance of what that means. Supposing a jobber sells to a plumber bathtubs, kitchen sinks, lavatories and these other articles, slop sinks, &c., now apply this rule here to the jobber in making out his

bill or to the manufacturer in making out his bill? A. Yes. 1

Q. How must the bill be made?

A. Cover the enameled ware and such permanent fixtures as go with the enameled ware, as usually furnished by the manufacturer as a part of the fixture itself.

Q. What does that mean "shall be invoiced by individual items"?

A. That means the bathtubs shall be invoiced at the price of the bathtubs.

Q. On the bill? A. Yes.

Q. And the kitchen sinks the same way? A. Yes, sir.

Q. That is every article must be itemized on the bill 2
separately, is that it? A. Yes.

Q. That governs the sale from the manufacturer to the jobber?

A. Yes, and from the jobber to the plumber.

Q. What is the purpose of that, to assist you and your auditors?

A. This price list covers enameled ware and is not intended to include such articles as supply pipes or stop cocks, &c.

Q. What is the purpose of separating in lump sums the bathtubs and kitchen sinks and lavatories—that is what 3
I want to get at—is that to enable you and your auditors to determine the number of bathtubs sold and whether the resale prices have been observed? A. Yes.

Q. In respect to bathtubs, kitchen sinks and all these other articles? A. Yes, either to jobbers or plumbers.

Q. I read on the same page "Goods shall be sold at prices established and prevailing in the various zones into which the goods are shipped, regardless of the point of purchase"; what does that mean?

A. That means if goods are purchased, for instance, in Pittsburg— 4

Q. Which is in Zone what? A. Zone 1.

Q. By whom?

A. By a jobber, and shipped, for instance, to Kansas City—

Q. Which is in what zone?

A. In Zone 3, that the goods shall be invoiced at the prices named for Kansas City.

Q. That is for Zone 3?

A. Yes, for Zone 3, and not at the prices named for Pittsburg, which is in Zone 1.

Q. Said prices being established for the separate zones in this price list (indicating)? A. Yes.

Q. I direct your attention to the page numbered 4 in the white sheets and the foot-note thereof "Goods must be sold to the plumber at the quantity prices established in the sheets;" what does that mean?

A. That clause was inserted for the reason—

Mr. GROSVENOR: Just say what it means and give the reason later.

A. The reason will explain what it means. It was done for the reason that I thought possibly that the jobbers being enabled to buy in any quantity at carload prices at the cities named on this sheet might through error resell to the plumbers at the carload prices.

Q. And does that prevent it? A. Yes.

Q. Let me understand this: Is it not right that the jobber buys from the manufacturer at carload prices always? A. No.

Q. Under these contracts A. No.

Q. Is he not allowed carload prices to jobbing points? A. No, not unless he buys in carloads.

Q. I direct your attention now to pages 16 to 18 of the white pages of that price list. Page 16 is headed "Special Drillings," and then there is a schedule of prices for special drillings. That page gives the charge or states the charge which each manufacturer and jobber must impose for those drillings; isn't that right? A. Yes.

Q. And that is the same for all these licensed manufacturers? A. Yes.

Q. And that is done on the article sold before it leaves the manufacturer, generally, is it not? A. Yes.

Q. On page 18 there are certain boxing and freighting charges. Those are established uniformly for the 16 manufacturers, is that right? A. Yes.

Q. And for all the jobbers who signed the contract? A. Yes.

Q. Are they allowed to vary from those rules? A. No.

Q. Those charges are established in detail for all the different articles which are sold under this price list? A. Yes.

Q. And those charges form some of the conditions which 1
are part of the licensing arrangement? A. Yes.

Q. I show you a typewritten letter on which the heading is "Edwin L. Wayman, Arrott Building, Pittsburg, May 28, 1910" addressed to the jobbing trade, and ask you if you drew that up? A. Yes.

Q. That is a copy of the letter which you intended sending out, and before sending it out you issued this copy, being a proposed draft, to the different manufacturers?

A. No, I sent that to the jobbers?

Q. You sent that to all the jobbers?

A. Yes, as far as I knew of. 2

Q. To what jobbers did you send it, all those in the list we had today?

A. All those in the Blue Book. I knew of no other jobbers.

Q. You did not know of any others except those in the Blue Book? A. That is right.

Q. And to all of those you sent this paper?

A. Yes, sir.

Mr. GROSVENOR: I offer the letter in evidence as "Petitioner's Exhibit No. 42."

The letter referred to was then marked and filed 3
as "Petitioner's Exhibit No. 42."

Q. I show you a letter headed "Edwin L. Wayman, Arrott Building, Pittsburg, May 31, 1910," addressed to the jobbing trade; is that a copy of a letter issued by you on the date indicated? A. Yes.

Q. And that was issued to the same jobbers as the letter of May 28? A. Yes.

Q. Now, this refers to a letter of May 19? A. Yes.

Q. Have you a copy of that letter? A. I think I have.

Mr. GROSVENOR: I offer this letter of May 31 in 4
evidence as "Petitioner's Exhibit No. 43."

The letter referred to was then marked and filed as "Petitioner's Exhibit No. 43."

Q. Now I show you a letter on your letterhead, and signed by you, dated May 19 and addressed to the jobbing trade. Is that (indicating) a copy of the letter issued by you? A. Yes, sir.

Q. And that was sent to the same jobbers as the other two letters? A. Yes, sir.

Q. You don't know of any other jobbers? A. No.

Mr. GROSVENOR: I offer that letter in evidence as "Petitioner's Exhibit No. 44."

The letter referred to was then marked and filed as "Petitioner's Exhibit No. 44."

Q. I show you another letter dated June 3, 1910, on your letterhead, signed by you, or with your name, and ask if that is a copy of a letter issued by you?

A. Yes, that is Exhibit 11 in the petition.

Mr. GROSVENOR: I offer that in evidence without the pencil notations, as "Petitioner's Exhibit No. 45."

The letter referred to was then marked and filed as "Petitioner's Exhibit No. 45."

Q. This letter of June 3 was issued in the same way as the others? A. Yes, sir.

Q. To the same jobbers? A. Yes.

Q. And to no others? A. No.

Q. Because you knew of no others?

A. Yes; each of these letters also went to the manufacturers.

Q. In each case? A. Yes.

Q. And were these letters furnished to the unlicensed manufacturers also?

A. Yes, I believe I furnished these to the unlicensed manufacturers also.

Q. I direct your attention to the last exhibit, No. 45, which is the letter of June 3, 1910, and call your attention to the paragraph on the second page headed "Distribution and Resale of Licensed Sanitary Enameled Iron Ware." That paragraph reads: "To purchase Licensed Sanitary Enameled Iron Ware, during the period beginning June 6th and ending Dec. 31st, 1910, it is necessary for you to execute a Jobber's License Agreement Contract, sample of which is attached, with each of the Licensed Manufacturers with whom you may desire to deal. Copies for signature will be sent you in duplicate by each of the Licensed Manufacturers, the execution of which makes you a Licensed Distributor of Sanitary Enameled Iron Ware. Licensed Ware cannot be sold to you, if you have not ex-

ecuted these Contracts." By that paragraph you refer, do you not, to the provisions of the licensed manufacturers' agreement and the provisons contained in the licensed jobbers' agreements? 1

A. That refers, in so far as those agreements are concerned, to paragraph 9 of the jobber's license agreement, wherein it is provided that such rules and regulations are in force until other rules and regulations may be substituted therefor by the licensor.

Q. I show you a typewritten sheet and ask if that is a copy of the general letter issued by you to the several licensed manufacturers prior to the issuance by them of the forms of license contracts to jobbers? A. Yes. 2

Q. That is Exhibit 12 of the petition, is it not? A. Yes.

Mr. Grosvenor: I offer that in evidence as "Petitioner's Exhibit No. 46."

The paper referred to was then marked and filed as "Petitioner's Exhibit No. 46."

Q. What time did you send that letter out to the different manufacturers?

A. It was either the latter part of May or near the first of June, I have forgotten which.

Q. Just a few days before they were allowed to send out the licensed jobber's contracts? 3

A. Before I furnished them to them to be sent out.

Q. Now, Mr. Wayman, you stated yesterday that you had some correspondence with Mr. Kohler of the J. M. Kohler Sons Company, of Sheboygan, Wisconsin, with reference to going into this licensing arrangement? A. Yes.

Q. But you returned those letters to him? A. Yes.

Q. I show you a typewritten sheet dated May 25, 1910, addressed to Mr. F. J. Torrance of the Standard Sanitary Manufacturing Company, and purporting to be signed by you, and I ask you if that is the letter sent by you to Mr. Torrance on that day? A. Yes. 4

Q. That is a copy of Exhibit No. 12 to the petition?

A. Yes.

Q. Will you look at that pencil notation? A. Yes.

Q. Do you recognize that? A. Yes.

Q. Whose is it? A. Mr. Torrance's.

Q. Who is Mr. Gregg?

A. He is advertising manager of the Standard Sanitary Manufacturing Company, has charge of all printing, &c.

Mr. GROSVENOR: I offer that in evidence, with the pencil notation of Mr. Torrance, which was identified by the witness, as "Petitioner's Exhibit No. 47."

The paper referred to was then marked and filed as "Petitioner's Exhibit No. 47."

Q. You are familiar with the handwriting of Mr. Torrance? A. Yes, usually.

Q. And you take that to be his? A. Yes.

Q. I introduced in evidence yesterday a copy of a letter dated February 7 and addressed by you to Mr. Walter J. Kohler, in which you referred to the informal discussion at the meeting of February 1. Do you recall that?

A. That is not quite the correct statement.

Q. Do you recall this exhibit (indicating)? A. Yes.

Q. Do you recall your testimony yesterday about that exhibit? A. Yes.

Q. Well, do you recall receiving a reply from Mr. Kohler to that letter? A. Yes.

Q. Will you look at this letter and see if that is a copy? A. Yes, it is.

Mr. GROSVENOR: I offer this letter dated February 10, 1910, addressed to E. L. Wayman, Pittsburg, Pennsylvania, in evidence, as "Petitioner's Exhibit No. 48."

The letter referred to was then marked and filed as "Petitioner's Exhibit No. 48."

Q. (Reading): "Mr. E. L. Wayman, Pittsburg, Pa., Dear Sir: Acknowledging yours of the 7th regarding resale price and license arrangement. We are not prepared to state, today, that we would enter into a license arrangement, and consequently are not sending you a list of our patents. As you know, we are opposed to price agreements, but we are interested in anything which pertains to the betterment of business conditions, and if anything develops along the line you have in mind, we are satisfied at any and all times to market our output at prices equal to those of the Standard Sanitary Manufacturing Company. Very truly yours, J. M. Kohler Sons Company, per (blank)

President." Now, you addressed a letter to Mr. Kohler in reply to that? A. I think I did. 1

Q. Let me show you this letter of February 12, addressed to Walter J. Kohler, President, purporting to be signed by you, and ask you if that was addressed by you to him on the date indicated? A. Yes.

Mr. GROSVENOR: I offer that in evidence as "Petitioner's Exhibit No. 49."

The letter referred to was then marked and filed as "Petitioner's Exhibit No. 49."

Mr. GROSVENOR: I will read it: "Walter J. Kohler, President, J. M. Kohler Sons Company, Sheboygan, Wisconsin. Dear Sir: I am pleased to acknowledge receipt of your letter of the 10th with reference to resale prices and license agreement. I do not know how this matter is going to work out, but your letter leads me to believe that if something along these lines can be worked out that will be legitimate and worth while, that I can count on your co-operation." 2

Q. Now, you received a letter in reply to that letter of yours, Mr. Wayman?

A. I remember such a letter; I would say that is correct. 3

Mr. GROSVENOR: I offer the letter in evidence, it being dated February 14, 1910, addressed to Mr. E. L. Wayman and signed by J. M. Kohler Sons Company, as "Petitioner's Exhibit No. 50."

The letter referred to was then marked and filed as "Petitioner's Exhibit No. 50."

Mr. GROSVENOR: I will read this letter of February 14, 1910:

"Feb., 14, 1910.

"Mr. E. L. Wayman, 4
Pittsburg, Pa.

"Dear Sir:—

"Resale Price and License Arrangement.

"Answering yours of the 12th. As you know from repeated conferences and some correspondence had with us, we are not very enthusiastic about the license arrangement and will not commit ourselves,

1 at present, to the statement that we will join if it is formed. In our letter of the 14th we intimated that if a license arrangement was worked out and we decided, at that time, to become parties to this agreement, or to co-operate as outsiders, that we would, in that event, be satisfied to sell our goods on the same basis as the Standard Sanitary Mfg. Company.

"Yours very truly,

"J. M. Kohler Sons Co.,

per

"WJK-W Pres."

2 Q. Now, you testified yesterday, Mr. Wayman, in respect to a meeting at Chicago on the second of March?

A. Yes.

Q. After which you drew up that memorandum of agreement? A. Yes.

Q. You testified that Mr. Kohler was present? A. Yes.

Q. I show you a letter dated February 25, 1910, and addressed to Mr. W. J. Kohler, and purporting to be signed by you, and ask you if that is a copy of the letter addressed by you to him on the date indicated?

A. I recall a letter of that nature, and I presume that
3 is the letter which resulted in my meeting those people in Chicago on March 2.

Q. You recall writing to him about that time? A. Yes.

Mr. GROSVENOR: I offer that letter in evidence as "Petitioner's Exhibit No. 51."

The letter referred to was here marked and filed as "Petitioner's Exhibit No. 51."

Mr. GROSVENOR: I will read that letter:

"February 25, 1910.

"Mr. W. J. Kohler,
c/o J. M. Kohler Sons Co.,
4 Sheboygan, Wis.

"Dear Sir:

"Can you attend a meeting next Wednesday morning at Chicago of the companies to whom this letter is addressed for the purpose of trying to arrive at some definite recommendations to be made to the special meeting of all the companies, which is to be called the first part of next month at New York

regarding licenses and resale prices? The market conditions are such that this matter ought to be settled without further delay, and I would thank you to telegraph me not later than Monday if you can attend. 1

Yours very truly,
"E. L. Wayman, Commissioner.

"Copies to:

H. M. Hoelscher,	L. Wolff Mfg. Co.
F. J. Torrance,	Standard Sanitary Mfg. Co.
A. H. Cline, Jr.,	U. S. Sanitary Mfg. Co.
W. J. Kohler,	J. M. Kohler Sons Co.
H. T. Gates,	McCrum-Howell Co.
J. B. Murphy,	J. M. Kohler Sons Co."

2

Q. According to the plans stated in the letter, there was that meeting in Chicago? A. Yes.

Q. And the persons to whom these letters were addressed were there present? A. Yes.

Q. Now, you received a telegram from Mr. Kohler in response, agreeing to be there?

A. I presume I did. He was there. It was a telegram or a letter; I don't recall which. 3

Q. And after the meeting you drew up that agreement?

A. Yes.

Q. And after the agreement was drawn up you went to several manufacturers and obtained their signatures?

A. Yes.

Q. I show you a letter dated March 16, and addressed to W. J. Kohler, care of J. M. Kohler Sons Company, and ask you if you remember writing to him that day and if that is a copy of the letter?

THE WITNESS: You are asking now about the letter of March 16, this letter (indicating)? 4

Mr. GROSVENOR: Yes.

A. Yes, I recall writing such a letter.

Mr. GROSVENOR: I offer that letter in evidence as "Petitioner's Exhibit No. 52."

The letter referred to, dated March 16, 1910, was then marked and filed as "Petitioner's Exhibit No. 52."

1 Mr. GROSVENOR: I will read that letter now (reading):

"Mar. 16, 1910.

"Walter J. Kohler, Pres.,
J. M. Kohler Sons Co.,
Sheboygan, Wis.

"Dear Sir:—

"I enclose copy of Memorandum of Agreement which has been signed by the following companies that I have had the opportunity of seeing—

2

The McCrum-Howell Co.,
Blairsville Enameled Ware Co.,
National Sanitary Mfg. Co.,
The Barnes Mfg. Co.,
Standard Sanitary Mfg. Co.,
L. Wolff Mfg. Co.,
United States Sanitary Mfg. Co.,
A. Weiskittel & Son Co.,
The Humphryes Mfg. Co.,
Union Sanitary Mfg. Co.

3 "There is now a meeting of the Pipe Association going on in Pittsburgh which is very largely attended by most of the leading jobbers and the majority of them are very much in favor of the proposition. I hope you can see your way clear to join with the other Companies in this Arrangement.

"Will you be kind enough to let me hear from you as soon as possible?

"Yours very truly,
"E. L. Wayman."

4 Q. I show you a letter purporting to be from the Kohler Company dated March 21, 1910, in reply to that letter of yours, and I ask you if that is a copy of a letter which you received from them? A. Yes.

Mr. GROSVENOR: I offer that letter of March 21 as "Petitioner's Exhibit No. 53."

The letter referred to was then marked and filed as "Petitioner's Exhibit No. 53."

Mr. GROSVENOR: That letter reads as follows:

"March 21, 1910. 1

"Mr. E. L. Wayman,
Pittsburgh, Pa.

"Dear Sir:—

"We have your letter of March 16th with enclosed copy of tentative agreement entered into by certain manufacturers regarding license arrangement and resale prices. We have taken this question up with competent counsel, who advise that it is openly a price agreement and there is no question in his mind that it would be so considered, and is therefore 2
in conflict with the laws of Wisconsin. Under the circumstances we do not feel that we are in a position to enter into this agreement, although if a satisfactory arrangement can be worked out whereby we co-operate with your association we would do so.

"Very truly yours,
"J. M. Kohler Sons Co.,
"WJK-D per Pres."

Q. Did you send Mr. Kohler, in your letter of March 16, a copy of that Memorandum Agreement which has been put in as Government's Exhibit No. 3 and which you took 3
around with you to the different manufacturers?

A. I believe I did. I am not positive about that, though. Will you let me see that? (Letters were shown to witness.) Yes, I believe I did.

Q. You testified yesterday that on March 24 or about that day you sent out to all the manufacturers of sanitary enameled iron ware a copy of that license agreement between you and the manufacturers and the copy of the proposed form of the jobber's license agreement, which were put in evidence as Exhibits 8 and 10?

A. Yes, marked "Sample Copies." 4

Q. I show you what purports to be a copy of a letter by you addressed to Mr. Kohler on March 23, and ask you if you sent him that letter? A. Yes, sir.

Mr. GROSVENOR: I offer that letter as "Petitioner's Exhibit No. 54."

The letter referred to was then marked and filed as "Petitioner's Exhibit No. 54."

Mr. GROSVENOR: I will read that letter (reading):

"Mar. 23, 1910.

"Walter J. Kohler, Pres.,
J. M. Kohler Sons Co.,
Sheboygan, Wis.

"Dear Sir:—

"There will be a special meeting of the Manufacturers for the purpose of entering into a License Agreement covering the Manufacture of Sanitary Enameled Iron Ware at the Hotel Astor, New York City, beginning at 10:30 A. M. Tuesday morning, March 29th, and concluding probably the 30th.

"The Hotel Management has placed at our disposal two committee Rooms on the 8th floor free of charge, in consideration of which I would suggest that you stop at the "Astor" if possible.

"Tomorrow I will send you copies of the License Agreement and the Jobbers' Agreement, etc. The entire matter together with the wording of the contracts has been passed on by competent counsel.

"Please come to the meeting prepared to file your 'Future Delivery Orders.'

"Please advise if you will attend.

"Yours very truly,

"E. L. Wayman."

Q. What were those future delivery orders?

A. Orders that he may have taken for delivery maybe the balance of the year. Such orders are taken frequently.

Q. Will you look at Exhibit 2 of the Petition, which is the resolution of the manufacturers to take no orders for delivery beyond May 31, 1910. That instruction to Mr. Kohler to come prepared to file his future delivery orders had in contemplation the passing of that resolution, is that right?

A. I cannot say that was so at the time the letter was written.

Q. Did you write to the other manufacturers to bring their future delivery orders? A. No, not all of them.

Q. You testified yesterday that you had that meeting of the 29th and 30th of March? A. Yes.

Q. Was Mr. Kohler present? A. No.

Q. Was his company represented? A. No.

Q Did you write him a telegram? A. Yes. 1

Q. Urging him to be there— I will show you what purports to be a copy of the telegram addressed to him on that date and ask you if that is a copy of the telegram which you say you sent to him? A. Yes, it is.

Mr. GROSVENOR: I offer that in evidence as "Petitioner's Exhibit No. 55."

The telegram referred to was then marked and filed as "Petitioner's Exhibit No. 55."

Mr. GROSVENOR: I will read that telegram (reading): 2

"Mar. 29, 1910.

"W. J. Kohler,

c/o J. M. Kohler Sons Co.

"All manufacturers except you and Weiskittel represented at meeting. Weiskittel here tonight. 15 members here in person, balance by letter and wire. After a thorough consultation with attorney Jackson of Noble, Jackson & Hubbard we are all satisfied entire proposition is absolutely legal and more feasible and easier to handle than 3 electrical proposition which has been in force several years. Sense of meeting favorable to license agreement and resale proposition. 91% of production voting favorable, some await consultation and consent of their associates or counsel. Members desire your wire time for tomorrow's meeting called for 10 A. M.

"E. L. Wayman."

Q. Now, "All manufacturers except you and Weiskittel represented at meeting"; does that mean all members of the Sanitary Enameled Ware Association? 4

A. It refers to all the manufacturers that were in that association, yes, and another one, the Kerner Manufacturing Company, which was not a member of the association.

Q. He was there at the meeting?

A. No, he was at the hotel, though.

Q. Was he represented there at the meeting? A. No.

Q. Kohler did not join the licensing arrangement? A. No.

Q. (Reading): "15 members here in person, balance by

1 letter and wire"; you were authorized to represent them as favorable?

A. I had letters and telegrams from those not there stating the licensing arrangement I had proposed was agreeable to them.

Q. The consultation with Attorney Jackson has reference to the remarks which you said were delivered on that occasion? A. Yes, and to which I testified this morning.

Q. (Reading): "Sense of meeting favorable to license agreement and resale proposition"; did any one vote against the proposition at that meeting?

2 A. Not that I recall, but I believe some would not express an opinion or give a definite answer as to whether they would enter into a license agreement?

Q. Who were they?

A. Mr. Caldwell of the Cahill Iron Works.

Q. He subsequently assented?

A. Yes; and Mr. Kelly of the Iron City Sanitary Manufacturing Company.

Q. Did he subsequently sign? A. No.

Q. Who else was there and refused to sign? Was Mr. Kelly there?

3 A. He was there on the morning of the 29th, and I believe part of the afternoon.

Q. What did you do in the two days?

A. The meetings were not of long duration; after Mr. Jackson left, which was early in the afternoon, we adjourned.

Q. How long did he address the meeting?

A. Oh, I presume five or ten minutes, and he was asked a lot of questions.

Mr. NOBLE: You mean that he had talked about ten minutes?

4 A. Yes.

Q. Now, you say, "91 per cent. of production voting favorable"; you had the means, then, of ascertaining the production?

A. No, not as far as value was concerned. That was an estimate of what I thought the number of furnaces were that I would be able to license.

Q. As a matter of fact, all who indicated an intention to join that day did join except whom?

A. The Blairsville Enamel Company and the Clymer Manufacturing Company. 1

Q. And that is the only reduction, then, which should be made from the 91 per cent. as estimated that day?

A. Yes, and I wish to add that that estimate was considerably out of the way from being correct.

Q. You thought it was correct at the time? A. Yes.

Q. The rest reads: "Members desire your wire time for tomorrow's meeting called for 10 a. m." Were you instructed to wire to Mr. Kohler?

A. There was some discussion as to whether Mr. Kohler would enter into a license agreement. 2

Q. Was that discussion in the open meeting?

A. No, I think it was down stairs in the lobby afterwards.

Q. Who participated in that discussion?

A. That is pretty hard to say; I could not remember.

Q. Give us the best of your recollection?

A. I cannot say whether that was down stairs or whether it was in the meeting. Several of us composed the telegram.

Q. This meeting was a meeting of the members of the Sanitary Enameled Ware Association? 3

A. Not as an association.

Q. What was it a meeting of?

A. Manufacturers of Sanitary Enameled Iron Ware.

Q. Just for the purposes of considering this licensing arrangement? A. Yes.

Q. Who acted as secretary of the meeting?

A. There was no secretary.

Q. Were there any notes made of what went on?

A. Yes, I made notes and several others made notes for their own information as to the number of furnaces, &c., in the business; nobody seemed to know exactly how many furnaces existed. 4

Q. Who made notes?

A. I made notes; Mr. Hoelscher, I remember, made some notes; Mr. Caldwell made memorandums, I remember, particularly with reference to patent cases.

Q. Who else made notes? A. That is all I recall.

Q. Did you see those notes afterwards? A. No.

Q. Did you keep the notes which you made? A. No.

Q. Did you call the meeting to order?

A. No—yes, I called the meeting to order and suggested the election of a chairman.

Q. Who was elected chairman? A. Mr. Torrance.

Q. How long did you preside—just long enough to introduce him?

A. Yes, and to say that I had prepared preliminary license agreements—this is as I remember it, I cannot recall the exact language—of which copies had been furnished —and that the meeting was called to consider these license agreements.

Q. Mr. Torrance then took the chair?

A. I suggested that a chairman be appointed to preside at the meeting, and as I recall, the chairman was elected by vote.

Q. How many sessions did you have during these two days?

A. We had a morning session on the 29th and an afternoon session on the 29th; a morning session on the 30th— I don't remember whether we had a meeting in the afternoon or not.

Q. Was your introduction of Mr. Torrance at the morning session of the 29th?

A. I did not introduce Mr. Torrance.

Q. I understood you to say that you did. A. No.

Q. Did you give way to Mr. Torrance as chairman on the morning of the 29th?

A. I did not give way to Mr. Torrance or act as chairman. I simply called the meeting to order.

Q. When? A. In the morning.

Q. On the 29th? A. Yes.

Q. How long did you act as chairman?

A. I just told them what the meeting was called for and suggested that a chairman be elected.

Q. And Mr. Torrance was elected? A. Yes, sir.

Q. Did he preside at the rest of the morning session?

A. Yes.

Q. At how much of the morning session did he preside?

A. The balance of the session.

Q. How much was it?

A. I presume it may have lasted an hour or an hour and a half.

Q. Who presided at the afternoon session?

A. Mr. Torrance, I think.

Q. Who presided at the morning session the next day? 1

A. I don't know whether there was any chairman of that meeting or not.

Q. How long was the meeting on the morning of the 30th?

A. I couldn't say, but I will say that it might have lasted an hour.

Q. You do not recall whether there was a meeting in the afternoon of the 30th?

A. No, I do not. I want to make a statement. I am not quite clear on a point which I testified to this morning, and I am under the impression that I answered incorrectly. 2 It had something to do with Exhibit 4 in the petition, wherein, I believe, Mr. Grosvenor asked me if the license agreement referred to in my letter of April 16, known as Exhibit 4 of the petition, referred to the memorandum of agreement, which is known as Exhibit 3 in the petition. I believe I answered, "Yes." I meant to answer that the license agreement referred to in my letter of April 16, and mentioned in Exhibit 4, referred to the sample copies of the license agreement that I had prepared for consideration at the meetings held in New York March 29 and 30.

Examination suspended. 3

The taking of the testimony was then adjourned to the second day of November, 1910, at 10:30 o'clock a. m. at the same place.

Pittsburgh, Pennsylvania, November 2, 1910.

Pursuant to adjournment the evidence for the Petitioner was resumed this second day of November, 1910, at 10:30 o'clock a. m., at the same place, as follows, with same 4 counsel present.

EDWIN L. WAYMAN, a witness heretofore produced and sworn, resumed the stand for continuation of direct examination, and testified as follows.

DIRECT EXAMINATION (continued):

Mr. NOBLE: I am producing an original copy signed by Mr. Wayman of Petitioner's Exhibit No. 31, which

1 I found this morning. By agreement it is substituted in place of Exhibit No. 31 without the pencil notations.

BY Mr. GROSVENOR:

Q. I showed you yesterday a copy of the telegram addressed by you to Mr. Kohler on March 29, 1910, at the time of the conference in New York, urging him to wire you. That was introduced in evidence as Exhibit No. 55. I show you a paper and ask you if that was a copy of the reply received by you from Mr. Kohler?

2 A. Yes, that is a telegram of March 29.

Mr. GROSVENOR: I offer that telegram in evidence as Petitioner's Exhibit No. 56.

The telegram referred to was then marked and filed as "Petitioner's Exhibit No. 56."

Mr. GROSVENOR: I will read that: "March 29, 1910. E. L. Wayman, Hotel Astor, New York. You know our position on this question at present. Due to absence of counsel from city, we will not commit ourselves further on proposition now. If you will submit to us papers adopted at your meeting we will
3 give matter further consideration. Walter J. Kohler."

Q. I show you what appears to be a copy of a telegram addressed by you on March 31 to Walter J. Kohler, and ask you if that is a copy of the telegram sent by you to him on that day? A. Yes.

Mr. GROSVENOR: I offer that in evidence as Petitioner's Exhibit No. 57.

The telegram referred to was then marked and filed as "Petitioner's Exhibit No. 57."

Mr. GROSVENOR: I will read it: "March 31, 1910.
4 Walter J. Kohler. Matter shaped up here today and signed. Members pleased at your reply, as we can satisfy you legal end. Will you meet me Chicago or Sheboygan Saturday? Will submit brief and Court decision. Would mail papers but cannot do so. Wire appointment to Pittsburgh. E. L. Wayman. (Night Letter)."

Q. When you state in that telegram: "Matter shaped up here today and signed," what do you mean was signed?

THE WITNESS: May I have a copy of the Petition? 1

A copy of the Petition was then shown to the witness.

A. I had in mind what is known as Petitioner's Exhibit No. 2.

Q. Did you have in mind also the resolution passed on March 30 stating that the manufacturers of enameled ware hereby agreed to take no orders beyond May 31, 1910?

A. No.

Q. That resolution was signed the same day? A. No.

Q. Oh, that resolution was signed the 29th of March? 2

A. Yes.

Q. You state "would mail papers but cannot do so." What was the reason?

A. Mr. Jackson had a brief with him that I wanted to get, but I did not know whether I could get it at that time or not.

Q. You received in reply to that telegram another telegram from Mr. Kohler dated March 31, 1910? Is this it?

A. I don't know if that is the wording or not, but I believe that is so.

Mr. GROSVENOR: I offer that in evidence as Petitioner's Exhibit No. 58. 3

The telegram referred to was then marked and filed as "Petitioner's Exhibit No. 58."

Mr. GROSVENOR: I will read that: "March 31, 1910. E. L. Wayman, 1509 Arrott Building, Pittsburgh, Pa. Our attorney will not be home before 7th. However, if you desire, can meet you at our Chicago office at 9 Saturday morning, second, to discuss matters. Walter J. Kohler.

Q. I show you what purports to be another telegram addressed to Mr. Kohler and signed by you: It is dated March 4
31. Is that right? A. Yes.

Mr. GROSVENOR: I offer that in evidence as Petitioner's Exhibit No. 59.

The telegram referred to was then marked and filed as Petitioner's Exhibit No. 59."

Q. Did you have a conference with Mr. Kohler in Chicago as arranged in that telegram, which reads: "March 31,

1910, Walter J. Kohler: Will meet you 9 a. m. Saturday at your Chicago office. E. L. Wayman."

A. As I remember it I went to Chicago and saw either Mr. Kohler or Mr. Murphy, or both. I am not positive whether Mr. Kohler was there or not.

Q. Where was the meeting?

A. It was in Mr. Kohler's office.

Q. What was the object of your meeting him?

A. I took with me a brief giving an outline of patent case decisions which I secured from Mr. Jackson, and gave either Mr. Murphy or Mr. Kohler—not remembering whether Mr. Kohler was present—a list of cases which I asked him to turn over to his attorney to look up.

Q. Your object was to persuade Mr. Kohler to join the licensing arrangement? A. Yes.

Q. Was anybody there with you and Mr. Kohler and Mr. Murphy? A. No.

Q. You went alone? A. Yes.

Q. What did Mr. Kohler say?

A. I said I don't know now whether Mr. Kohler was there or not.

Q. Well, did you receive the consent of Mr. Kohler's firm to join?

Mr. NOBLE: I suppose you refer to the agreement?

Mr. GROSVENOR: Yes, the licensing arrangement.

Mr. NOBLE: Well, I object to that term "arrangement."

Mr. GROSVENOR: I used the term "licensing arrangement" to describe the whole thing, everything pertaining to it.

Q. Let me ask this question: Your object was to have the Kohler people enter into the same agreements with you that the other manufacturers contemplated entering into, is that it?

A. Contemplated entering into, yes. My entire idea was to try and get Mr. Kohler to enter into a licensing agreement with me, the same as I hoped to have the other manufacturers do.

Q. I show you a copy of a letter dated March 31, 1910, addressed to W. J. Kohler, president, J. M. Kohler Sons Company, Sheboygan, Wisconsin, and purporting to be

signed by you. Is that a copy of a letter addressed by you to him on that day? A. Yes. 1

Mr. GROSVENOR: I offer that in evidence as Petitioner's Exhibit No. 60.

The paper referred to was then marked and filed as "Petitioner's Exhibit No. 60."

Q. I will read this letter: "I attach copies of the preliminary agreements, with signatures attached, that were entered into at the special meeting of the manufacturers held at New York March 29 and 30." You say there "copies of the preliminary agreements," using the plural. 2 What agreements were those?

A. Those agreements were known as Petitioner's Exhibits Nos. 2 and 4.

Q. Which were the resolutions signed on March 29 and 30 respectively? A. Yes.

Q. (Continuing): "In accordance with the resolution adopted for the appointment of a special committee to conclude the matter, the following gentlemen were elected by ballot: T. R. Barnes, A. H. Cline, Jr., Howard T. Gates, H. M. Hoelscher, F. J. Torrance." That has reference to the price and schedule committee? A. Yes. 3

Q. Which met at Mount Clemens? A. Yes.

Q. (Continuing): "This committee will begin a special ten days' session at Pittsburgh, beginning probably the latter part of next week." That meeting was held at Mount Clemens which has to be held at Pittsburgh?

A. Yes, at my suggestion it was changed, because we would have been interrupted by other business at Pittsburgh.

Q. The meetings at Mount Clemens lasted how long?

A. About a week.

Q. And you had daily sessions? A. Yes. 4

Q. Morning and afternoon? A. Yes.

Q. What time did you meet in the morning?

A. I don't remember.

Q. The morning session was several hours in duration?

A. We met in the morning and stopped for lunch, and then resumed in the afternoon.

Q. Then, did you meet in the evening again too?

A. No.

Q. (Continuing): "Will you therefore kindly study over

carefully the various paragraphs in the license agreement and jobber's agreement," you there referred to the printed forms issued on March 24? A. Yes.

Q. And considered at the meetings in March in New York? A. Yes.

Q. (Continuing): "and if you have any suggestion or amendments to offer, kindly write me in detail at once or make arrangements to appear before the committee. In case you decide to take up the matter in person, please write me beforehand regarding such matters as you may have to offer, and I will advise you the date on which the committee will meet with you;" did the committee make appointments to meet the gentlemen who appeared before it? A. No.

Q. It heard them as they came?

A. Yes, I arranged as near as I could ahead to get various people there when it was convenient.

Q. Mr. Hoelscher was chairman of the committee?

A. Yes.

Q. You acted as the secretary of the committee?

A. No, I did not.

Q. (Continuing): "In the absence of any reply from you, the committee will take it for granted that the license and jobber's agreements as printed, copies of which you have, are satisfactory to you, together with the 'differentials' allotted to your company in accordance with the attached sheet." By "differentials" you meant certain discounts allowed to the different manufacturers? A. Yes.

Q. And not those allowed to the Kohler Company?

A. No.

Q. The Kohler Company is one of the large companies?

A. Yes.

Q. And therefore it was not necessary to give them a differential?

A. No, on the basis of their own statement I considered it was not necessary to give them or allot them a differential, they having previously stated that they could obtain the same prices as the Standard Sanitary Manufacturing Company.

Q. (Continuing): "In accordance with the attached sheet," you, then, attached to this letter a schedule giving the preferential discounts which it was proposed to allot to the several companies?

A. Yes, which I proposed to allot to the several companies. 1

Q. (Continuing): "If the differentials allotted to your company do not meet with your approval, please state fully your views and reasons. Your very prompt attention to this entire matter is requested in order that the matter may be concluded within the shortest possible time. Yours very truly, E. L. Wayman." I show you what purports to be copies of those resolutions of March 30 and 29. Will you identify those? A. Yes, those are the resolutions of March 29 and 30.

Q. These were previously offered in evidence. Now I show you what purports to be a sheet of preferential discounts, which you stated in the letter just introduced were sent to Mr. Kohler. Will you look at this and state if that appears to be a copy? 2

A. As near as I can remember.

Mr. GROSVENOR: I will not offer that in evidence, but I will ask the stenographer to please mark it Exhibit 1 for identification.

Papers referred to were marked "Exhibit No. 1, for identification."

Q. I show you what purports to be a copy of a letter addressed to you by the Kohler Company on April 12, 1910, and ask you if that is a copy of the letter sent to you about the date indicated? A. Yes. 3

Mr. GROSVENOR: I offer that in evidence as Petitioner's Exhibit No. 61.

The letter referred to was then marked and filed as "Petitioner's Exhibit No. 61."

Mr. GROSVENOR: I will read that:

"April 12, 1910. 4

"E. L. Wayman,
Pittsburgh, Pa.

"Dear Sir:—

"After consultation with our attorney we are firm in our position that we will not become a party to the license agreement now under consideration by the manufacturers of enameled ware, neither are we able to co-operate with you by agreeing to main-

tain a price as that is unquestionably contrary to not only the laws of Wisconsin but of the United States and we have no desire to evade either.

"Our product is equal to any on the market and we can assure you that we will get as good prices for our goods as any of the other manufacturers in the business.

"Very truly yours,

"J. M. Kohler Sons Co.,

"WJK-W Per (blank) Pres."

Mr. NOBLE: I object to the admission of the letter known as "Petitioner's Exhibit No. 61" in so far as it refers to a licensing arrangement now under consideration by the manufacturers of enameled iron ware. I have no objection to the letter as exhibiting the views of the Kohler Company, but do object to it as bearing any evidence of the views or attitude of any one else.

Mr. GROSVENOR: That letter is introduced by counsel for Government as part of the transactions at the time when the evidence shows E. L. Wayman was negotiating for the purpose of entering into licensing agreements with the Kohler Company, and it is part of the correspondence on that matter.

Q. Now, I show you a letter dated April 16, 1910, addressed to Walter J. Kohler. Will you look at that and state whether that is not a copy of Petitioner's Exhibit No. 31? A. Yes.

Q. You have testified that Petitioner's Exhibit No. 31 was a circular letter sent by you to the manufacturers of sanitary enameled ware on the day indicated? A. Yes.

Q. That states that: "Some changes were made in the arrangement of the schedules as you will note by the attached copy, as well as some changes in the differentials." I show you a sheet saying "The following 'preferential discounts' from the selling prices established by the Licensor will be allowed the various manufacturers on sales to jobbers only," and ask you if that is a copy of the sheet enclosed by you with the letter dated April 16, which is Petitioner's Exhibit 31, to the several manufacturers?

A. I believe that is correct.

Mr. GROSVENOR: Now, I offer that sheet for

identification and ask the stenographer to mark it for identification as Exhibit No. 2. 1

The paper referred to was then marked "Exhibit No. 2 for identification."

Q. I show you a copy of a letter apparently addressed by you to Kohler and dated April 27, 1910, and ask you if that is a copy of a letter addressed by you to him on that date? A. Yes.

Mr. GROSVENOR: I offer that in evidence as "Petitioner's Exhibit No. 62."

The letter referred to was then marked and filed as "Petitioner's Exhibit No. 62." 2

Mr. GROSVENOR: This letter reads as follows:

"April 27, 1910.

"Mr. W. J. Kohler,
c/o J. M. Kohler Sons Co.,
Sheboygan, Wisconsin.

"Dear Sir:

"In order to prepare the final license agreement papers, will you please advise me by return mail under what State laws your company is incorporated. The meeting for executing these papers will be held in the offices of Noble, Jackson & Hubbard, 52 William Street, New York City, the latter part of next week, on the 5th or 6th of May. Please prepare to attend on either of these dates and I will advise you later by telegram or letter the exact date. It is of utmost importance that every one be present. 3

"Yours very truly,
"E. L. Wayman."

Q. At the time of writing that letter you had not given up hope of securing Mr. Kohler's signature? A. No. 4

Q. That is a copy of a letter addressed by you to all the licensed manufacturers indicated?

THE WITNESS: With reference to the meeting?

Mr. GROSVENOR: Yes.

THE WITNESS: To put through the license agreement?

Mr. GROSVENOR: Yes.

A. Yes.

Q. I show you copies of two letters, one addressed to you by Mr. Kohler dated April 29, and another a letter of yours dated May 2, 1910, to Mr. Kohler, and I ask you if those are copies of letters, one received by you and one written by you, about the dates indicated? A. Yes.

Mr. GROSVENOR: I offer those in evidence as Petitioner's Exhibits Nos. 63 and 64 respectively.

The letters referred to were then marked and filed as "Petitioner's Exhibits Nos. 63 and 64."

Mr. GROSVENOR: I will read those letters:

"April 29, 1910.

"Mr. E. L. Wayman,
Pittsburgh, Pa.

"Dear Sir:—

"Answering yours of April 27. Our company is incorporated under the State laws of Wisconsin. As advised you some time ago, we will not enter into a license agreement and therefore will not be represented at the meeting in New York next week.

Very truly yours,
"J. M. Kohler Sons Co.,
per (blank) President."

Q. As a matter of fact, were they represented at that meeting? A. No.

Mr. GROSVENOR: I will now read Petitioner's Exhibit No. 64:

"May 2, 1910.

"Dear Mr. Kohler:

"Notwithstanding your recent letters, I am enclosing you copies of the final forms for your perusal. I sincerely hope that you and Mr. Murphy will at least attend the meeting to be held at New York Friday. With kindest regards, I am,

"Yours very truly,
"E. L. Wayman."

Q. The final forms there referred to were those printed forms signed May 6? A. No.

Q. What were they? 1

A. The final form of license agreement between the manufacturers and myself is referred to, and the final form of jobbers' license agreement is not the one referred to in that.

Q. You did enclose with that letter a copy of a proposed form of agreement between licensed manufacturers and jobbers? A. Yes.

Q. And that form contained the names, did it not, of the proposed licensed manufacturers?

A. Yes, and I believe—

Q. (Interrupting): Among those names were the names 2
of the Kohler Company, the Blairsville Company and the Iron City Company? A. Yes.

Q. At that time you were still endeavoring to secure license agreements with them? A. Yes.

Q. After May 6, those names were eliminated from the jobbers' license agreements, is that right? A. Yes.

Q. Mr. Wayman, I show you a book containing certain typewritten sheets and ask you if that book is a copy of the minutes of the Sanitary Enameled Iron Ware Association from August 4 to February 1, with the exception that the minutes for the meeting of February 1, 1910, have been 3
extracted previously and offered in evidence as Petitioner's Exhibit No. 7?

A. Yes, and some personal memorandums that I kept therein.

Mr. GROSVENOR: I offer that book and ask the stenographer to mark it for the purpose of identification as Exhibit No. 3.

The paper referred to was then marked "Exhibit No. 3 for identification."

Q. I show you certain pages in this book of minutes 4
known as "Exhibt 3 for identification" and ask you if those are the minutes of the general meeting of the Sanitary Enameled Iron Ware Association under date of October 6, 1909, at Pittsburgh. Are those correct?

A. Yes, sir.

Q. How many pages of those minutes are there?

A. Four.

Q. I will read from the fourth page the following paragraph: "Regarding the policy of selling concerns who re-

1 sell direct to the consumer, the Commissioner was instructed to prepare a resolution, the wording of which would not interfere with the law in regard to the restraint of trade, and present same at the next meeting for consideration."

Mr. NOBLE: Are you reading that in evidence?

Mr. GROSVENOR: I am reading that from those minutes which have been identified as the minutes of this association for the meeting of October 6, 1909, at Pittsburgh.

Mr. NOBLE: I object, on the ground that it is
2 incompetent, immaterial and irrelevant and has nothing to do with the issues raised in this suit.

Q. Will you look at this page of these minutes (indicating) and read the companies represented at that meeting, with the names of the persons representing them?

A. (Reading):

Members	Representatives
Blairsville Enameled Ware Co.	Blairsville, Pa. Mr. F. D. Cook Mr. Reed
3 Barnes Mfg. Co., The	Mansfield, O. Mr. T. R. Barnes
Cahill Iron Works, The	Chattanooga, Tenn. Mr. F. H. Caldwell
Clymer Mfg. Co.	Indiana, Pa. Mr. W. A. Guthrie
Colwell Lead Co.	New York Mr. J. T. Duryea
Day-Ward Co., The	Warren, O. Mr. A. G. Ward
Humphryes Mfg. Co., The	Mansfield, O. Mr. D. A. Carpenter
4 Iron City Sanitary Mfg. Co.	Pittsburgh, Pa. Mr. J. A. Kelly
Kohler Sons Co., J. M.	Sheboygan, Wis. Mr. Walter J. Kohler
Mott Iron Works, The J. L.	New York City Mr. Edward Hammann
McVay & Walker,	Braddock, Pa. Mr. Alex. C. Walker

McCrum-Howell Co.	New York City Mr. Howard T. Gates	1
National Sanitary Mfg. Co.	Salem, Ohio Mr. F. G. Borden Mr. Edwin Baillee	
Standard Sanitary Mfg. Co.	Pittsburgh, Pa. Mr. Theo. Ahrens Mr. W. A. Myler	
Union Sanitary Mfg. Co.	Noblesville, Ind. Mr. C. E. Gates	
United States Sanitary Mfg. Co.	Pittsburgh, Pa. Mr. A. H. Cline, Jr. Mr. C. F. Arrott	2
Wolff Mfg. Co., L.	Chicago, Ill. Mr. H. M. Hoelscher	
Weiskittel & Son, A.	Baltimore, Md. Mr. A. Weiskittel	
Wheeling Enameled Iron Co.	Wheeling, W. Va. Mr. J. E. Wright.	

Q. The paragraph which I have read states that the Commissioner—you were the Commissioner? A. Yes. 3

Q. "was instructed to prepare a resolution, the wording of which would not interfere with the law in regard to the restraint of trade"; did you consult with counsel in respect to the wording of such a resolution? A. Yes.

Q. Whom did you consult?

A. Consulted with my uncle in Chicago.

By Mr. Noble:

Q. What is his name?

A. John E. Wayman, and Walter Lyon, of Lyon & Hunter, Pittsburgh. 4

By Mr. Grosvenor:

Q. Any one else? A. No.

Q. I show you certain pages in this book which has been marked for identification as Exhibit No. 3, and I ask you if those are the minutes of the executive committee of the Sanitary Enameled Ware Association for November 30, 1909, at Pittsburgh, consisting of two pages? A. Yes.

Mr. Grosvenor: I will read from the page of

the minutes which you have identified as being the minutes of November 30, of the executive committee: "The question of the policy of the Manufacturers selling concerns who in turn did not confine their sale through the recognized trade channels, i. e., through the plumber and not direct to the Consumer, was discussed. No concerted action on this matter was taken, but each Manufacturer present expressed himself to the effect that in the future he would confine his sales to such Companies that came within the definition of a Jobber or Plumber as defined by the National Trade Resolutions and that he would individually refuse to sell Jobbers who in turn did not confine their sales through the recognized trade channels."

The next paragraph reads:

"It was the sense of the Meeting that the Commissioner be instructed to take the matter up with the various Supply Associations, acquaint them with the policy of the Manufacturers and secure their co-operation."

The next paragraph reads:

"The following Resolutions were unanimously adopted subject to the approval of the Members at the General Meeting to be held Dec. 1st.

"RESOLVED: That the Manufacturers shall not accept any orders for Sanitary Enameled Ware for Delivery beyond March 31st, 1910; that any Future Delivery Order shall not be accepted without definite specifications and shipping dates, and subject to the proviso that the Manufacturer shall have the option of shipping any unfilled portion of such future delivery orders any time during the month of March, 1910."

Mr. NOBLE: I object to the paragraphs that have been read and move that they be stricken from the record as immaterial, incompetent and irrelevant, and as having nothing to do with the licenses granted by Mr. Wayman and the questions involved in the suit.

Mr. GROSVENOR: Counsel states that these minutes are introduced with the object of showing the purpose of the license agreements between Wayman and the manufacturers, which purpose is set out in the petition. 1

Mr. NOBLE: I renew my objection on the same grounds.

BY Mr. GROSVENOR:

Q. Will you read the names of the persons which those minutes of November 30 state were present at the meeting of the executive committee? 2

A. (Reading):

"D. A. Carpenter, representing Humphryes Mfg. Co.,
A. H. Cline, Jr., representing U. S. Sanitary Mfg. Co.,
H. M. Hoelscher, representing L. Wolff Mfg. Company,
Theo. Ahrens, representing Standard Sanitary Mfg. Co.,
E. L. Dawes, representing " " " "
C. E. Gates, representing Union Sanitary Mfg. Co.,
J. A. Kelly, representing Iron City Sanitary Mfg. Co.,
A. Weiskittel, representing A. Weiskittel & Son Co."

Q. I now show you in this same Exhibit No. 3, marked for identification, certain pages purporting to be the minutes of the second general meeting of the members of the Sanitary Enameled Ware Association of December 1, 1909, at Pittsburg, and ask you if those are the minutes of that meeting as drawn up by you as Commissioner of that Association? A. Yes, sir. 3

Q. I will read from the minutes of that meeting which you have identified—this is on the first page:

"The question of the policy of the Manufacturers selling concerns who in turn did not confine their sales through the recognized trade channels, i. e., through the Plumber and not direct to the Consumer, was discussed. No concerted action on this matter was taken, but each Manufacturer present expressed himself to the effect that in the future he would confine his sales to such Companies that came within the definition of a Jobber or Plumber as defined by the National Trade Resolutions and that he would individually refuse to sell Jobbers who in turn did not confine their sales through the recognized trade channels. 4

"It was the sense of the Meeting that the Commissioner take the matter up with the various Supply Associations, acquaint them with the individual policy of the Manufacturers and secure their co-operation."

What supply associations are referred to there by the phrase "various supply associations"?

Mr. NOBLE: I object to the reading of the portion of the minutes just read by counsel on the ground that they are immaterial and irrelevant, and the question of counsel as to the supply associations there referred to is likewise immaterial and irrelevant.

A. The Eastern and Central Supply Associations.

Q. Any other? A. No.

Q. What is the Eastern Supply Association a supply association of?

A. A supply association of Jobbers in Plumbing Supplies in the east and the Central in the west.

Q. It says here that it was the sense of the meeting that the Commissioner take the matter up with the various supply associations. In the Eastern Association with whom did you take the matter up? A. Mr. Frank S. Hanley.

Q. As representing that association?

A. Yes, and Paul Blatchford.

Q. For which association?

A. The Central Supply Association. I am not positive about the last, whether I took it up with Mr. Blatchford or not.

Q. With whom did you take the matter up in the Eastern Association? A. Mr. Hanley. I wrote to him.

Q. Was he connected with the committee of the National Supply Association? A. I believe he was.

Q. In what capacity? A. Secretary, I think.

Q. What are the National Trade Resolutions referred to here?

A. The National Trade Resolutions describe what, in the estimation of the representatives of the various associations constitute a jobber of plumbing supplies.

Q. I show you that Blue Book which you produced yesterday and which was filed as part of Exhibit 30; the pencil marks on the book indicating the jobbers with whom the various licensed manufacturers have entered into contracts,

and the typewritten sheet forming the rest of Exhibit 30 the whole exhibit giving the names of every jobber with whom the licensed manufacturers have entered into contracts, and I direct your attention to pages 2 and 3 of that book and ask you if that is the definition to which you referred in your last answer? A. Yes. 1

Q. And are those the resolutions which are referred to in this paragraph of the minutes which I have read, which paragraph states "but each Manufacturer present expressed himself to the effect that in the future he would confine his sales to such Companies that came within the definition of a Jobber or Plumber as defined by the National Trade Resolutions and that he would individually refuse to sell Jobbers who in turn did not confine their sales through the recognized trade channels." 2

Mr. NOBLE: The same objection is offered as heretofore to this line of questions.

A. The wording of Mr. Grosvenor's question says: "the definition of a Jobber or Plumber as defined by the National Trade Resolutions," and the matter referred to in the minutes exhibited does not refer to the resolution, but refers to what constitutes a jobber of plumbing supplies in the estimation of the representatives of the various supply associations. 3

Q. What I want to know is, is this a copy of the resolution referred to? A. I don't know.

Q. What is your opinion?

A. I am of the opinion that the one given there is correct.

Q. Whom was that (indicating) gotten up by?

A. I don't know who got up that list.

Q. Where did you get it? A. From Mr. Hanley.

Q. And he is the secretary of the Eastern Supply Association? A. Yes. 4

Q. And this is a list of the jobbers of plumbing supplies in the United States? A. Not a complete list.

Q. Will you now read into the record the names of the persons present as shown by the minutes of the second meeting of the Sanitary Enameled Ware Association as of December 1, 1909?

A. (Reading):

"T. R. Barnes, representing Barnes Mfg. Co., Mansfield, Ohio.
W. A. Guthrie, representing Clymer Mfg. Co., Indiana, Pa.
A. G. Ward, representing The Day-Ward Co., Warren, O.
D. A. Carpenter, representing Humphryes Mfg. Co., Mansfield, O.
H. D. Kenney, representing Humphryes Mfg. Co., Mansfield, O.
J. A. Kelly, representing Iron City Sanitary Mfg. Co., Pittsburgh.
Edward Hammann, representing J. L. Mott Iron Works, New York.
Howard T. Gates, representing McCrum-Howell Co., New York.
F. G. Borden, representing National Sanitary Mfg. Co., Salem, Ohio.
Theo. Ahrens, representing Standard Sanitary Mfg. Co., Pittsburg, Pa.
E. L. Dawes, representing Standard Sanitary Mfg. Co., Pittsburgh.
C. E. Gates, representing Union Sanitary Mfg. Co., Nobles-
ville.
A. H. Cline, Jr., representing U. S. Sanitary Mfg. Co., Pittsburgh, Pa.
H. M. Hoelscher, representing L. Wolff Mfg. Co., Chicago, Ill.
A. Weiskittel, representing A. Weiskittel & Son Co., Baltimore, Md."

Q. Do you recall writing to Mr. Hanley after the passing of that resolution? A. Yes.

Q. I show you in the same book a copy of a letter dated December 7, 1909, apparently addressed by you to Mr. Frank S. Hanley and marked "Personal," and ask you if that is a letter which was addressed by you to him on or about that date? A. Yes.

Mr. GROSVENOR: I offer that in evidence as Petitioner's Exhibit No. 65.

The paper referred to was then marked and filed as "Petitioner's Exhibit No. 65."

Mr. NOBLE: I offer the same objections as here- 1
tofore noted to the admission of this letter.

Mr. GROSVENOR:. Counsel for the Government states that this was offered in evidence for the purpose of sustaining, in part, the allegation in the Petition on page 12 as follows: "No defendant will sell any of its products in such commerce to any person or company who is not recognized by all the defendants as a jobber. That is to say, all the defendants confine their sales to such persons as all the defendants consider to be legitimate jobbers of sanitary enameled iron ware." 2

Mr. NOBLE: I offer the same objections as heretofore mentioned, and the further objection that the letter offered has nothing to do with the license agreements which Mr. Wayman has executed with the several licenses.

Mr. GROSVENOR: This letter is also offered in evidence for the purpose of showing the intent of the license agreements?

Mr. NOBLE: Note the same objections.

Mr. GROSVENOR: I will read this letter:

"Dec. 7th, 1909. 3

"Mr. Frank S. Hanley,
261 Broadway,
New York.

PERSONAL.

"Dear Sir:

"Replying to your recent letters with reference to the Manufacturers selling concerns who did not come within the definition of a Jobber as defined by the National Trade Resolutions.

"At the meeting of the Manufacturers held on Nov. 4
30th and Dec. 1st, the question of the policy of the Manufacturers selling concerns who in turn did not confine their sales through the recognized trade channels, i. e., through the Plumber and not direct to the Consumer, was discussed. No concerted action on this matter was taken, but each Manufacturer present expressed himself to the effect that in the future he would confine his sales to such Companies

1 that came within the definition of a Jobber or Plumber as defined by the National Trade Resolutions and that he would individually *refuse to sell Jobbers* who in turn did not confine their sales through the recognized trade channels.

"This individual expression was given with the understanding that the Manufacturers would receive support from the Jobbers in this matter. No concerted action on this matter was taken for reasons which you well know.

"Attention was called to the fact that the Manu-
2 facturers had come in contact with several instances in which the Jobbers were doing the very thing they have been asking the Manufacturers not to do.

"The Manufacturers desire to receive assurances that the Jobbers will do their part in supporting them in bringing about a better condition of affairs in this respect.

"In view of all the efforts that have been made to get the Manufacturers into this frame of mind, the Jobbers should consider this matter seriously, as it is undoubtedly the best opportunity that has been
3 presented to them to co-operate with the Manufacturers and eliminate the possibility of illegitimate concerns securing goods.

"Will you be kind enough to take this up through the proper channels and let us hear from you?

"Yours very truly,"

Q. (Reading): "No concerted action on this matter was taken, for reasons which you well know." What are the reasons?

A. Well, I brought the matter up in a personal way—

Mr. GROSVENOR: Just answer the question.

4 THE WITNESS: I am answering the question. As I understood it the jobbers throughout the country had been for years trying to—

Mr. GROSVENOR: I am asking about the action of the manufacturers. Why could there not be concerted action by the manufacturers?

THE WITNESS: Just a minute.

Mr. NOBLE: I call attention to counsel for the Government interrupting the witness.

Mr. GROSVENOR: Read the question. 1

The stenographer then read the question.

A. The jobbers, as I understood it, had been trying for years to get the various enameled ware associations which had been formed from time to time to act as a body in passing such a resolution as is called attention to, but it met with no success. What I called attention to in that letter I considered it useless.

Q. Why do you say "no concerted action was taken for reasons which you well know"?

A. I have just explained why.

Q. What action was taken, individual action, wasn't it? 2 Let me refresh your recollection by referring you to that paragraph of the minutes which I read a while ago and which instructed you to draw up a resolution which would not be in violation of the laws in restraint of trade. When you say here "no concerted action in this matter was taken for reasons which you well know," is not the reason which you referred to this, that in your judgment concerted action would have been unlawful?

A. I don't know that that question came up at the time on my part, but I could add that there might have been a doubt in my mind existing as to whether that would be 3 lawful.

Q. And so as to remove the doubt of unlawfulness you had individual action, is that right? A. No, absolutely no.

Mr. NOBLE: I object to that last question. The witness has said that there was no concerted action taken, and the question contained the suggestion that some action was taken.

Mr. GROSVENOR: Well, the minutes show it.

THE WITNESS: No, they do not. I object to that.

BY Mr. GROSVENOR: 4

Q. I will read on: "Attention was called to the fact that the manufacturers had come in contact with several instances in which the jobbers were doing the very thing they have been asking the manufacturers not to do. The manufacturers desire to receive assurances that the jobbers will do their part in supporting them in bringing about a better condition of affairs in this respect. In view of all the efforts that have been made to get the manufacturers

into this frame of mind, the jobbers should consider this matter seriously, as it is undoubtedly the best opportunity that has been presented to them to co-operate with the manufacturers and eliminate the possibility of illegitimate concerns securing goods. Will you be kind enough to take this up through the proper channels and let me hear from you." Did you hear from Mr. Hanley in response to that letter? A. I believe I received an acknowledgement.

Q. Have you retained it?

A. No, I think I turned it over to you in New York City.

Mr. GROSVENOR: I haven't it.

Mr. NOBLE: We will see if it is here.

Q. Now, in the beginning of this letter, Petitioner's Exhibit No. 65, you say, "Replying to your recent letters"; have you those other letters? A. No, I haven't them.

Q. Have you any recollection of what became of them?

A. I am under the impression that I handed everything over to you at the time.

Q. You mean at the meeting of May 23rd?

A. Yes, at the time you examined me I think I told you that I kept very little correspondence or bulletins from Mr. Hanley, because I did not consider them of any importance and threw them in the waste-basket.

Mr. GROSVENOR: My recollection is that none of those letters were received, and moreover all letters were returned to your counsel.

Mr. NOBLE: There is no such letter in our files, Mr. Grosvenor.

Q. I direct your attention to another page of the Exhibit marked for identification as No. 3 and which we have identified as the minutes of the Sanitary Enameled Ware Association, and ask you if the minutes which I show you are the minutes for August 18, 1909, of the executive committee of the Sanitary Enameled Ware Association?

A. Yes.

Mr. GROSVENOR: I read from the pages which you have identified as being the minutes of that meeting the following paragraph: "It was the sense of the meeting that the present selling prices on a good

many articles were entirely too low and should be remedied." I now read from the same minutes the names of those present: 1

Representatives	Companies
Mr. D. A. Carpenter,	representing The Humphryes Co.
" H. M. Hoelscher,	representing L. Wolff Co.
" L. C. Huesmann,	representing Union Sanitary Mfg. Co.
" A. H. Cline, Jr.,	representing United States Sanitary Mfg. Co.
" Francis J. Torrance,	representing Standard Sanitary Mfg. Co. 2
" A. Weiskittel,	representing A. Weiskittel & Sons.
" J. A. Kelly,	representing Iron City Sanitary Mfg. Co.

Mr. NOBLE: Mr. Stenographer, please note my objections to the portion of the minutes just read on the grounds before stated, and also my objections to the paragraph which the counsel for Government is about to read.

Mr. GROSVENOR: I will read the following.

"In the absence of Mr. Kohler, Vice-Chairman, Mr. Francis J. Torrance acted as Chairman. 3

"The minutes of the meeting for August 4th were read and approved.

"A letter was read from Mr. Walter J. Kohler, stating that he would be unable to act as Chairman of the Board of Directors.

"It was moved and seconded that Mr. Hoelscher on his return to Chicago, see Mr. Murphy and Mr. Kohler with reference to the matter. Carried."

Now I will read the next paragraphs.

Mr. NOBLE: Note the same objections.

Mr. GROSVENOR: (Reading): "A communication 4 was read from The J. L. Mott Iron Works acknowledging minutes of the meeting held August 4th, and stating that they would sign the Articles of Association as soon as they were forwarded.

"A letter was read from Mr. Torrance, stating that Mr. Wayman had accepted the position of Commissioner at the salary named, Four Thousand Dollars ($4,000.00), per year, together with office, travelling

and other necessary expenses for the conduct of the Association."

Mr. NOBLE: In addition to my previous objections, I would like to object on the ground that the minutes show that at that time Mr. Wayman had no connection with the association of which these are the minutes.

Q. I point out to you the word at the end of those minutes "Commissioner"; do you recall whether you had come to Pittsburgh at that time, August 18?

A. Yes, I believe counsel's objection is an error. I was in Pittsburgh at that time.

Q. You signed these minutes?

A. I don't know. I simply made copies of them and sent them on. I may have signed them.

Q. Were you present at the meetings of the executive committee of the Sanitary Enameled Ware Association?

A. Yes.

Q. You acted as secretary? A. Yes.

Q. Were you present at this meeting? A. Yes.

Q. In performing the duties of Commissioner you also performed the duties of secretary of the Association?

A. There was a secretary, Mr. Hoelscher.

Q. Well, who drew up the minutes?

A. I made memorandums and sent them off for the secretary.

Q. I direct your attention to another page of this exhibit marked for identification No. 3, being a statement of assessments for the year beginning August 5, 1909. Is that a true and accurate statement of the assessments?

A. Yes.

Q. I notice here that the amounts assessed upon the several companies are different. For instance, that of the Standard Sanitary Manufacturing Company in the first column is $2,700, and in the second, $4,050, whereas in other companies, such as the Colwell Lead Company the assessment in the first column is $150 and in the second column $225. Will you state why the assessments upon the different companies were different?

A. In making up those figures the amounts were used that had been paid in approximately by the various companies into former associations, and were arrived at ap-

proximately on the basis of the relative output or importance of the various companies.

Mr. GROSVENOR: I offer that page in evidence as Petitioner's Exhibit No. 66.

The paper referred to was then marked and filed as "Petitioner's Exhibit No. 66" and reads as follows:

ASSESSMENT FOR YEAR BEGINNING AUGUST 5th, 1909.
" " " " FEBRUARY 5th, 1910.

			Quarter.	
Blairsville Enameled Ware Co.	$ 150.00	$ 225.00	$ 37.50	$ 56.25
Barnes Mfg. Co., The	200.00	300.00	50.00	75.00
Cahill Iron Works, The	400.00	600.00	100.00	150.00
Colwell Lead Co.	150.00	225.00	37.50	56.25
Clymer Mfg. Co.	150.00	225.00	37.50	37.50
Day-Ward Co., The	300.00	450.00	75.00	112.50
Humphryes Mfg. Co.	300.00	450.00	75.00	112.50
Iron City Sanitary Mfg. Co.	500.00	750.00	125.00	187.50
Kohler Sons Co., J. M.	500.00	750.00	125.00	187.50
Mott Iron Works, J. L.	300.00	450.00	75.00	112.50
McVay & Walker	200.00	300.00	50.00	75.00
McCrum-Howell Co.	300.00	450.00	75.00	112.50
National Sanitary Mfg. Co.	300.00	450.00	75.00	112.50
Standard Sanitary Mfg. Co.	2700.00	4050.00	675.00	1012.50
Union Sanitary Mfg. Co.	300.00	450.00	75.00	112.50
United States Sanitary Mfg. Co.	500.00	750.00	125.00	187.50
Wolff Mfg. Co., L.	750.00	1125.00	187.50	281.25
Weiskittel & Son, A.	300.00	450.00	75.00	112.50
Wheeling Enameled Iron Co.	200.00	300.00	50.00	75.00
	$8500.00	$12750.00		$3187.50

Q. Have you produced the agreements for the assignment of the Lindsay and Ditheridge patents? A. I have.

1 Mr. GROSVENOR: I offer those produced by counsel, in evidence, namely, as follows, as Petitioner's Exhibit No. 67, the agreement between E. L. Wayman and the Mott Iron Works, dated the 5th of May, 1910.

The paper referred to was then marked and filed as Petitioner's Exhibit No. 67."

Q. That was executed by you on that day?

THE WITNESS: On the 5th of May?
Mr. GROSVENOR: Yes.

2 A. Yes.

Q. And immediately after you executed the paper which I now show you (indicating)? A. Yes.

Mr. GROSVENOR: I offer that in evidence as Petitioner's Exhibit No. 68, it being the assignment by J. L. Mott Iron Works to E. L. Wayman of the Patent No. 949,625.

Paper referred to was then marked and filed as "Petitioner's Exhibit No. 68."

Mr. GROSVENOR: I offer in evidence the agreement produced by counsel dated May 4, 1910, and executed between E. L. Wayman and L. Wolff Manufacturing Company as Petitioner's Exhibit No. 69, and the assignment between the same parties and dated the same day as Petitioner's Exhibit No. 70.

3

Q. This assignment was executed immediately after the agreement? A. Yes.

Q. Now, prior to this assignment of the Lindsay patent on May 4, you had paid no money for any option?

Mr. NOBLE: Objected to as immaterial, incompetent and irrelevant.

4

A. No.

Q. Prior to the assignment of the Arrott patent to you—which was on what date? A. The fourth of May.

Q. (Continuing): You had paid nothing for any option?

Mr. NOBLE: Note the same objection as heretofore noted.

A. No.

Q. Prior to the 5th of May, on which day was executed the assignment of the Ditheridge patent to you, you had paid no consideration? 1

Mr. NOBLE: Note the same objections.

A. No.

Q. On what day did you take an assignment of the Arrott patent? A. The 4th of May.

Q. On that day how much did you pay for the patent?

A. $10,000.

Q. In what form? You testified you had paid in note $5,000 and $5,000 in cash? A. Yes. 2

Q. Did you pay the $5,000 in cash on the 4th of May?

A. I did.

Q. At the time of the assignment? A. Yes.

Q. Was that by check? A. Yes.

Q. On what bank?

A. People's State Bank of Detroit, Michigan.

Q. Before you came to Pittsburgh you were connected with a company in Detroit? A. Yes.

Q. Had that company failed? A. In one respect.

Q. It had closed up business? A. Yes.

Q. What was your capacity in that company? 3

A. My title was assistant manager, and I was acting as manager.

Q. Were you the owner of that company? A. No.

Q. Was it a stock company? A. Yes.

Q. Did you own stock in it? A. Yes.

Q. Did you receive a loan from any one to make that payment of $5,000 to the Standard? A. From the bank.

Q. Which bank? A. People's State Bank.

Q. Had you at the time a large deposit with them?

A. No.

Q. Had you any deposit with them? A. No.

Q. Who introduced you to the bank? 4

A. Mr. Eugene Sloman.

Q. What security did you give for the loan? A. Stock.

Q. In what company?

A. Standard Sanitary Manufacturing Company.

Q. Was the stock in the Standard Sanitary Manufacturing Company which you deposited as security for the loan of $5,000 your own? A. Yes.

Q. When did you obtain it? A. On May 2nd.

1 Q. 1910? A. Yes.
Q. Who assigned it to you?
A. It was not assigned to me.
Q. Who gave it to you? A. Mr. Myler.
Q. What office does he hold? A. Treasurer.
Q. How many shares did he give you? A. 100.
Q. Did you pay anything for it? A. Yes.
Q. How much? A. I exchanged collateral with him.
Q. What company?
A. The Universal Electric Welding Company of New York City.
2 Q. Was that stock yours? A. No.
Q. Who gave it to you? A. Mr. Eugene Sloman.
Q. Who is he?
A. An old friend of mine, I have known him for ten years.
Q. Did you pay anything for it? A. No.
Q. What was it worth on the market?
A. I considered it worth at that time from sixty to seventy-five dollars a share.
Q. It was given to you outright?
A. It was loaned to me.
Q. Loaned to you? A. Yes.
3 Q. Did you pay anything for the loan? A. No.
Q. How many shares did you get from Mr. Sloman?
A. 300.
Q. When did you get these 300 shares from Mr. Sloman? A. The 29th of April.
Q. Of what year? A. 1910.
Q. Did you tell him why you wanted those 300 shares?
A. I did.
Q. Whom did you see regarding the assignment to you of the 100 shares of the Standard Sanitary Manufacturing Company besides Mr. Myler? A. Only Mr. Myler.
4 Q. Did you have any conversation with Mr. Torrance respecting that assignment to you? A. No.
Q. You say you did not have any conversation with Mr. Torrance respecting the assignment to you? A. No.
Q. Do you recall a meeting in New York City on June 20 at which I was present? A. Yes.
Q. Do you recall stating at that time that you discussed the matter of the assignment with the executive committee of the Sanitary Enameled Ware Association?

A. I recall that I had discussed the entire matter with various members of the executive committee. 1

Q. Do you recall with whom you stated you had spoken of the matter?

THE WITNESS: Of the matter in general or the assignment?

Mr. GROSVENOR: First of the assignment of the patent to you?

A. Mr. Dawes and Mr. Myler and Mr. Torrance.

Q. Are you able to state then at this time that you did discuss that matter with Mr. Torrance, the matter of the assignment of this patent to you? 2

A. I am able to state that I had made arrangements with Mr. Dawes for the assignment of the patent.

Q. Will you answer my question. Did you or not discuss with Mr. Torrance the assignment of the patent to you?

THE WITNESS: In what respect.

Mr. GROSVENOR: Read the question.

The stenographer then read the question.

A. Yes, in some respects.

Q. How long had you known Mr. Torrance? 3

A. Since the early part of 1907.

Q. How old are you, Mr. Wayman? A. Thirty-two.

Q. Mr. Torrance was the one who made the offer to you to come to Pittsburgh? A. No.

Q. He was the one who telephoned to you to come to Pittsburgh for the manufacturers?

A. He telephoned to me the decision of the manufacturers at a meeting held some time previous.

Q. You say Mr. Myler loaned you 100 shares of the Standard Sanitary Manufacturing Company's stock?

A. Yes, sir. 4

Q. On your note as security? A. No, to borrow on.

Q. To borrow how much?

A. I wanted to borrow from the bank, and he took and exchanged this collateral which I gave him.

Q. Did you offer to let him have the stock which you got from Mr. Sloman in New York?

A. I didn't get security from Mr. Sloman in New York; Mr. Sloman is from Detroit.

1 Q. This $500 which you say you paid for the Ditheridge patent? A. Yes.

Q. That was paid what day? A. May 5.

Q. Did you pay that in check or in cash? A. In check.

Q. What bank?

A. On the People's State Bank, Detroit.

Q. Is Mr. Sloman an officer in that bank? A. No.

Q. A depositor there? A. Yes.

Q. Was that check which you gave in payment of this $500 and which was drawn on this deposit in the People's Bank, drawn on the same deposit upon which the check
2 which you gave Mr. Myler was drawn? A. Yes.

Q. You opened an account there at that bank, then, upon the deposit of this electric stock, is that right?

A. Yes, having had an account there previously.

Q. You got from them a loan which was secured by this electric stock, is that right? A. Yes.

Q. How much was that loan? A. $7,000.

Q. That was the loan on the electric stock? A. Yes.

Q. How much deposit had you prior to that?

THE WITNESS: In that bank?

MR. GROSVENOR: Yes.

3 A. It was very small, and it had been several years since I had a deposit there.

Q. You had not drawn any checks on that bank for several years? A. Not that I recall.

Q. Was your deposit several dollars? A. Yes.

Q. Several hundred dollars? A. Yes.

Q. Several thousand dollars?

A. I don't know if it got in the thousands or not.

Q. But you had not drawn on the bank for several years? A. No, sir.

Q. You got, then, a loan for $7,000? A. Yes, sir.

4 Q. And you had an account of over $7,000 then?

A. No, I think not; I had closed my old account previous to that.

Q. How much did you then have? A. I cannot say that.

Q. Now, as to the Lindsay patent, you paid $500 for that? A. Yes.

Q. Was that paid by check drawn on the same bank?

A. Yes, as I remember it.

Q. About the same time? A. Yes, on May 4. 1

Q. Now, these three checks, the one for the Arrott patent and the one for the Lindsay patent and the one for the Ditheridge patent were all drawn after you had secured the loan on that electric stock? A. Yes, sir.

Examination Suspended.

At this point a recess was taken for one hour, the hearing to resume at 2 o'clock p. m.

2

After Recess.

EDWIN L. WAYMAN, resumed the stand for continuation of direct examination and testified as follows.

DIRECT EXAMINATION BY MR. GROSVENOR (continued):

Q. Now, before leaving this subject—that is, the subject which we were discussing before adjournment—I want to get clearly in my own mind and on the record how these patents were paid for? A. Yes.

Q. I understand you to say that at the time you took an assignment of the Arrott patent you paid $5000 by check 3
on a bank in Detroit. What bank was that?

A. The People's State Bank.

Q. And that you gave a note for $5000 secured by certain shares of stock of the Standard Sanitary Manufacturing Company; is that correct?

A. No, I didn't say that. I didn't say that note was secured by shares. The note was not secured.

Q. Did you give any collateral with the note? A. No.

MR. NOBLE: Do you mean the note to the Standard Sanitary Manufacturing Company? 4

MR. GROSVENOR: The note to the Standard.

THE WITNESS: No.

Q. What did you do with those shares of the Standard Sanitary Manufacturing Company then; please explain that.

A. I sent them to the People's State Bank in Detroit, Michigan, with my personal note, using the stock as security for a loan of $7000.

1 Q. From the bank? A. From the bank.

Q. Then, the note which you gave for $5000 to the Standard had no security? A. No.

Q. Other than your signature? A. That is all.

Q. Now, for the loan of $7,000 made to you by that bank in Detroit you gave how many shares of Standard Sanitary stock? A. 100.

Q. Anything else? A. No, outside of my note.

Q. Those 100 shares of Standard you got from whom?

A. Mr. Myler, which was his personal stock.

Q. Mr. Myler is an officer of the Standard Sanitary
2 Manufacturing Company? A. Yes.

Q. What officer? A. Secretary and treasurer.

Q. Is he one of the executive committee of that company? A. Yes.

Q. Had you had discussions with him about the assignment of the Arrott patent to you previous to its assignment?

A. Only in so far as the general proposition was concerned.

Q. How many meetings had you had with him to discuss the general proposition, as you call it?

3 A. That would be very hard to say. I saw him several times between last summer and the time at which this agreement and assignment was entered into.

Q. By last summer you mean the summer of 1909?

A. Yes.

Q. Mr. Myler gave you his own shares of stock in the Standard Sanitary Manufacturing Company. What security did you give him?

A. 300 shares of stock of the Universal Electric Welding Company of New York City.

Q. Did you take any receipt from him?

4 THE WITNESS: From Mr. Myler?

Mr. GROSVENOR: Yes.

A. No, but he did send a receipt to the party from whom I did get the stock.

Q. And that was who?

A. Mr. Eugene Sloman, Detroit, Michigan.

Q. Is Mr. Sloman in any way connected with the Standard Sanitary Manufacturing Company? A. No.

Q. What is his business?

A. He is in the brokerage and real estate business, and formerly he was a business associate of mine in the Seamless Steel Bathtub Company, of which company he was manager and vice-president at one time. 1

Q. Did you have any correspondence with Mr. Sloman with regard to making this loan? A. No.

Q. Did you see him personally about the matter?

A. Yes.

Q. Where? A. In Detroit.

Q. You went out there for that purpose? A. Yes.

Q. On what day did Mr. Myler give you these 100 shares of Standard Sanitary stock? A. May 2. 2

Q. When did you send them to Mr. Sloman?

A. I did not send them to Mr. Sloman. I sent them to the People's State Bank that same day.

Q. On the same day you received them? A. Yes.

Q. Did you give Mr. Myler a receipt for them? A. No.

Q. Did he take a receipt for them?

A. No, I gave him the stock of the Universal Electric Welding Company in exchange.

Q. And he gave Mr. Sloman the receipt? A. Yes.

Q. Do you know if Mr. Sloman gave Mr. Myler a receipt for the stock? 3

A. No, but I think he acknowledged receiving it.

Q. By letter? A. Yes.

Q. Did Mr. Sloman take the shares of stock to the bank, or did you send them? A. I sent them.

Q. Why would he acknowledge receipt of the stock, then?

A. He acknowledged receipt of the stock which Mr. Myler sent him.

Q. Mr. Sloman acknowledged the receipt of the delivery of certain stock by you to Myler?

A. No, I beg your pardon; he acknowledged receipt of the stock which Mr. Myler sent him and which I had given Mr. Myler. 4

Q. Then Mr. Myler did not keep the stock which you turned over to him? A. Yes, he did.

Q. Then, why did Mr. Sloman acknowledge receipt of them if Mr. Myler kept them?

A. He acknowledged receipt of the stock which I delivered to Mr. Myler—you have your questions interspersed there—please separate them.

Q. You said that Mr. Sloman acknowledged receipt of those 100 shares of Standard Sanitary Manufacturing Company stock?

A. No, I did not. I beg your pardon, but I did not. Mr. Sloman, I believe, acknowledged receipt of a letter from Mr. Myler to the effect that I had delivered 300 shares of Universal Electric Welding Company's stock to him, or a letter to the effect that this collateral would be satisfactory for the stock which he loaned me. That is in short what the transaction was.

Q. He said this collateral would be satisfactory for the stock which he loaned to you? A. Yes.

Q. What collateral do you mean?

A. The Universal Welding Company's collateral.

Q. Which you had delivered—

A. Which I had delivered to Mr. Myler.

Q. What was the collateral on that, to which he referred in his letter?

A. The collateral he loaned in exchange for this.

Q. For what?

A. The Universal Welding Company's stock.

Q. What did he give you?

A. 100 share of the Standard.

Mr. GROSVENOR: Will you read the answer to the preceding question again, please?

The stenographer then read the answer to the question, as follows:

"A. No, I did not. I beg your pardon, but I did not. Mr. Sloman, I believe, acknowledged receipt of a letter from Mr. Myler to the effect that I had delivered 300 shares of Universal Electric Welding Company's stock to him, or a letter to the effect that this collateral would be satisfactory for the stock which he loaned me. That is in short what the transaction was."

Q. Have you a copy of that letter? A. No.

Q. Have you ever had a copy of it? A. No.

Q. You have seen a copy of it? A. Yes.

Q. Where did you see it?

A. When I say I saw a copy of it, I saw the original at the time.

Q. That is, Mr. Sloman's letter to Mr. Myler? 1
A. Yes, and Mr. Myler's letter to Sloman.
Q. Where did you see that correspondence?
A. In Mr. Myler's office.
Q. The bank received these 100 shares and gave you a loan of $7,000? A. Yes.
Q. Did they notify you? A. Yes.
Q. Then you drew three checks on that bank, is that right? A. Yes.
Q. One check for $5,000? A. Yes.
Q. Which you gave to whom?
A. The Standard Sanitary Manufacturing Company. 2
Q. Who was present then?
A. Mr. Myler and Mr. Torrance, when the papers were executed.
Q. The second check you gave to whom?
A. I will go back. Previous to giving a check to the Standard Sanitary Manufacturing Company I had mailed a check, together with the papers, to the L. Wolff Manufacturing Company, either on the second or third of May. The next check was the one which I gave the Standard Sanitary Manufacturing Company for $5,000.
Q. Now, the third check you gave to whom? 3
A. The J. L. Mott Iron Works.
Q. That was for how much?
A. $250, and a note for $250.
Q. And the check to Wolff was for how much?
A. $500.
Q. Any note with it? A. No.
Q. Have you paid since that time anything on your note to the Standard? A. No.
Q. They today hold your note for $5,000? A. Yes.
Q. Have you paid anything on your note to the Mott Company? A. No.
Q. They hold, then, today your note for $250? A. Yes. 4
Q. You bought a patent from the Cahill Iron Works about this time or a little after?
A. I bought an application for a patent.
Q. Did you draw a check on the same deposit?
A. No, I drew a check on my deposit in Pittsburgh on the Monongahela National Bank.
Q. For how much? A. $250.

1 Q. Have you repaid that loan which the bank in Detroit made to you? A. Yes.

Q. When did you pay that?

A. I paid part of it in July; I think I paid $2,000 at the time. I paid the balance some time in August.

Q. Of this year? A. Yes.

Q. Where did you get the money to do that? A. I had my own money.

Q. I mean from what?

A. From royalties collected from the licensees.

Q. In which bank do you keep your account of moneys
2 received on royalties? A. Two banks.

Q. Where?

A. People's State Bank of Detroit, Michigan, and the Monongahela Bank in Pittsburgh.

Q. Do you have a separate bank account for the moneys received from the licensees?

A. No, I have a bank account of my own.

Q. You put all moneys received into that one account?

A. Yes. I have only one account, my own account.

Q. You have two accounts, one here and one in Michigan? A. Yes.

Q. Have you any other bank accounts? A. No.

3 Q. You have stated on the record the names of those two banks? A. Yes.

Q. Now, during the time these license agreements were being prepared, both the manufacturer's and jobber's license agreements which are Exhibits 8 to 11, you were in conference with the attorneys, I believe? A. Yes.

Q. Who were the attorneys?

A. Bakewell & Byrnes, Pittsburgh, Christy & Christy, Pittsburgh, and Noble, Jackson & Hubbard of New York.

Q. And of Noble, Jackson & Hubbard, Mr. Jackson was the one with whom you had dealings, is that right.

4 A. Yes.

Q. When did you first meet Mr. Jackson?

A. I think about seven years ago.

Q. At what time?

A. It was some time in the winter on a visit from the Pacific Coast that I made to New York City.

Q. What business were you in at that time?

A. The electrical business.

Q. When did you first consult with Mr. Jackson with respect to these license agreements? 1

A. About the middle of March, 1910.

Q. Was that after or before you had prepared those printed forms and which are put in evidence as Exhibits 8 and 10? A. That was after I had prepared them.

Q. Did you suggest to Mr. Jackson that he address the meeting in March in New York City? A. Yes, I did.

Q. Do you know, as a matter of fact who was counsel for any of these corporation defendants before that time?

A. No.

Q. Have you retained any correspondence which you had with Mr. Sloman with respect to this loan? 2

A. I don't remember having any correspondence with respect to the loan.

Q. When did you first make an effort to obtain the loan?

A. About the latter part of August of last year. That was not directly an effort, but an intimation that I would probably call on him to help me out.

Q. That is to Mr. Sloman? A. Yes.

Q. How early in August?

A. Oh, it was the latter part of August.

Q. Did you confer with Mr. Ahrens, the president of the Standard Sanitary Manufacturing Company about this assignment of the Arrott patent to you previous to its assignment? 3

A. Only in so far as the general proposition was concerned.

Q. Did you ask him whether the Standard would be willing to make an assignment of the Arrott patent?

A. I asked Mr. Ahrens if the Standard would be willing to sell me the Arrott patent.

Q. What did he say?

A. He referred me to Mr. Dawes, inasmuch as he said that was a manufacturing proposition, and he would prefer to have Mr. Dawes talk to me about it. 4

Q. What did Mr. Dawes say?

A. Mr. Dawes was not in favor of the matter at all at first.

Q. When did he become in favor of it?

A. I think along about, possibly, the first of December.

Q. I show you a copy of a letter dated May 5, 1910,

and addressed to you by the Cahill Iron Works, and ask you if you remember receiving that letter, or such a letter.
A. Yes, I remember that.

Mr. GROSVENOR: I will offer that letter in evidence as Petitioner's Exhibit No. 71.

The letter referred to was then marked and filed as "Petitioner's Exhibit No. 71."

Mr. GROSVENOR: I will read that (reading):

"The Cahill Iron Works
Chattanooga, Tenn.

May 5, 1910.

To E. L. Wayman,
1509 Arrott Bldg.,
Pittsburg, Pa.

Subject.

Mr. E. L. Wayman,
Pittsburg, Pa.

"Dear Sir:—

"We wrote you on yesterday, sending same by special delivery, c/o Noble, Jackson & Hubbard, Attorneys, New York; you gave no street number, but presume the letter reached you, or rather that it will reach you tomorrow morning when you are expected to be in New York. This letter states that at the present time indications were more favorable than they had been previously, as to our going into the arrangement, but that we could not say positively for a little while yet just what we would do."

Then there is some more of the letter which I will not read.

Q. Now, I show you a telegram addressed to you by F. H. Caldwell and dated May 6, 1910, and ask you if you remember receiving that? A. Yes.

Mr. GROSVENOR: I will offer that as Petitioner's Exhibit No. 72.

THE WITNESS: In answering that question I wish to say that that telegram has nothing to do what-

ever and has no bearing on the exhibit comprising a letter dated May 5 from the same company. 1

The telegram referred to was then marked and filed as "Petitioner's Exhibit No. 72."

Mr. GROSVENOR: I will read that telegram (reading): "May 6, 1910. Chattanooga, Tennessee. E. L. Wayman, New York. Everything favorable. Can answer positive one week. F. H. Caldwell."

Q. You were trying at that time to enter into a licensing agreement with the Cahill Iron Works? A. Yes.

Q. Had they indicated yet whether they would or not? A. Not positively. 2

Q. They state here that they could answer positively in one week. What did they mean by that? A. I don't know.

BY MR. GROSVENOR:

Q. I show you a letter dated May 7, 1910, addressed to you and signed F. H. Caldwell, and ask you if you remember receiving that letter? A. Yes.

Mr. GROSVENOR: I will offer that in evidence as Petitioner's Exhibit No. 73.

The letter referred to was then marked and filed as "Petitioner's Exhibit No. 73." 3

Mr. GROSVENOR: I will read that letter.

"Cahill Iron Works

"Eastern Branch
No. 76 West 36th St.
New York City.

Chattanooga, Tenn., U. S. A.
May 7, 1910.

"Mr. E. L. Wayman,
Pittsburg, Pa.

Dear Sir,—Your two telegrams received, the first one reading as follows: 4

"'License matter will be concluded tomorrow shall I include your goods in price list now in printers hands if you are withholding answer on account of patents you expect to issue to your company will say I will pay you for patents on same basis I have purchased others from Standard, Wolff and Mott, wire answer Manhattan Hotel.'

"The second one:

"'Your letter and telegram favorably received licenses executed this morning mailing yours.'

"Of course you had my reply to your first telegram, which was that I could not positively decide, but indications were favorable. This is all I can add at this time. I am sure all the gentlemen connected, yourself included, will say that I have been perfectly consistent up to this time. I am perfectly candid when I say, that while I see quite a great many objections, which I suppose all the other gentlemen do, at the same time, there are objections in remaining on the outside and acting, to a certain extent, in the shape of an obstructionist. This we do not want to do, if we can prevent it. At the same time, there is still one obstacle to be overcome; how this will terminate we cannot say. If it is insurmountable, and we have to tell you that it is impossible for us to co-operate and be one of you you must not, and we do not believe can, consistently blame me.

"As soon as I know whether we can join, then, of course, I will get all the information obtainable to determine fully what to do. No doubt you have all the plans, either in printed form or in such form as you can send it to me. I will be glad for you to mail this to me upon receipt of this letter.

"You refer in your telegram to certain patents, on a dredger, which I will be pleased to take up with you. Of course it is not a question of money with us that we are trying to 'hold anybody up' or anything of the kind, but I feel satisfied we have some very decided advantages on that line that are not known to our competitors generally. Our Company wants to be perfectly reasonable in regard to these matters, and will be ready to take them up with you just as soon as the remaining party, referred to in our telegram this morning, reports.

"You certainly deserve credit for the persistency with which you have pushed this matter, and I can

say very freely that you deserve success in any event. 1

"Very resp'ly
"F. H. Caldwell. (Signed)"

Q. Now, I show you a copy of a telegram addressed by you to Mr. F. H. Caldwell and dated May 16, 1910, and I ask you if you recall sending that telegram? A. Yes.

Mr. GROSVENOR: I offer that in evidence as Petitioner's Exhibit No. 74.

Paper referred to was then marked and filed as "Petitioner's Exhibit No. 74." 2

Mr. GROSVENOR: That reads as follows:

"Pittsburg, Pa.
May 16th, 1910.

"F. H. Caldwell,
c/o Cahill Iron Works,
Chattanooga, Tenn.

"Mr. Torrance received letter in which you state you had written me to come to Chattanooga. Have not received this letter. Can you not arrange to meet me in Cincinnati as I am handicapped for time compiling Price List which needs constant supervision to be out on time. Telegraph answer. 3

"E. L. Wayman."

Q. You had not yet at that time entered into an arrangement with Mr. Caldwell of the Cahill Iron Works?

A. No.

Q. How did you learn that Mr. Torrance had received a letter from Mr. Caldwell?

A. Mr. Torrance received a letter from Mr. Caldwell about meeting me in Chattanooga, but the letter miscarried.

Q. You were, then, conferring with Mr. Torrance at this time in reference to the Cahill Iron Works? A. No. 4

Q. How did you learn then, did Mr. Torrance telephone it to you?

A. I believe Mr. Torrance telephoned it to me.

Q. I show you a copy of a telegram dated May 29 and addressed to you. Will you tell me if you remember receiving such a telegram?

A. I remember receiving such a telegram.

Mr. GROSVENOR: I offer that in evidence as Petitioner's Exhibit No. 75.

The paper referred to was then marked and filed as "Petitioner's Exhibit No. 75."

Mr. GROSVENOR: I will read that:

"Chattanooga, Tenn., May 29th, 10.

"E. L. Wayman,
1403 Arrott Bldg., Pittsburg, Pa.

"Wire us when resale price will go into effect we thought there might be some delay send us new prices soon as possible. Mr. Caldwell will go to Louisville tomorrow night to meet Mr. Ahrens by his request on Tuesday.

"The Cahill Iron Works."

Q. Now, I show you a night letter telegram addressed to you by the Cahill Iron Works, and ask you if you recall receiving that?

A. No, this is the one which I did not have.

Q. What position did Mr. Caldwell hold in the Cahill Iron Works? A. President.

Q. I show you a letter from the Colwell Lead Company, and ask you if you received that, it is signed by Mr. Duryea? A. Yes.

Q. I show you the letter of February 14 addressed to you by Mr. J. T. Duryea dated March 15, 1910, and ask you if you recall receiving that letter?

A. Yes, sir; that is the one you just showed me.

Mr. GROSVENOR: I offer that letter as Petitioner's Exhibit No. 76.

The letter referred to was then marked and filed as "Petitioner's Exhibit No. 76."

Mr. GROSVENOR: I will read that letter:

"Colwell Lead Company
New York

"February 14th, 1910.

"Mr. E. L. Wayman,
1509 Arrott Bldg.,
Pittsburgh, Pa.

"Dear Sir:

"Replying to yours of the 10th, your reading of our letter of the 9th instant is entirely correct.

"We will not require any preferential below the lowest prices made by the Standard Sanitary Mfg. Co. 1

"Yours truly,
"Colwell Lead Company,
"JTD/BH "J. T. Duryea."

Q. Now, by preferentials there he means those manufacturers' preferentials allowed in the price agreement?

A. Yes.

Q. And this was the 14th of February, about a week after the circular letter which you testified you issued to the several manufacturers? 2

THE WITNESS: What circular letter was that?

Mr. GROSVENOR: Exhibit No. 12.

THE WITNESS: Does that letter refer to it?

Mr. GROSVENOR: This letter says: "Replying to yours of the 10th, your reading of our letter of the 9th instant is entirely correct. We will not require any preferential below the lowest prices made by the Standard Sanitary Manufacturing Company?

A. Yes, that refers to it.

Q. I show you a copy of a letter dated March 15, 1910, to you from Mr. Duryea, and ask you if you received that? 3

Mr. GROSVENOR: I offer that letter in evidence as Petitioner's Exhibit No. 77.

The letter referred to was then marked and filed as "Petitioner's Exhibit No. 77."

Mr. GROSVENOR: That letter reads as follows:

"March 15th, 1910.

"Mr. E. L. Wayman.

"Dear Sir: 4

"Yours of the 9th enclosing Memorandum of Agreement just received.

"In the abstract it looks good to me providing all manufacturers sign up,—however, I do not care to go on record regarding it until I have had an opportunity of going over it in detail with you, though of course we will be greatly influenced by what the other manufacturers do.

"I expect to be in my office about the 1st of April and will be glad to hear further from you.

"Yours truly,

"J. T. Duryea."

Q. Now I show you a copy of a letter dated January 11 and addressed to you by A. G. Ward of the Day-Ward Company, and I ask you if you recall receiving that letter from them? A. Yes.

Mr. GROSVENOR: I offer that in evidence as Petitioner's Exhibit No. 78.

The letter referred to was then marked and filed as "Petitioner's Exhibit No. 78."

Mr. GROSVENOR: The letter reads:

"The Day-Ward Co.
Warren, Ohio, Jan. 11th, 1910.

"To E. L. Wayman,
1509 Arrott Bldg.
Pittsburgh, Pa.

Subject

"Dear Sir:

"The writer has gone into the question of the proposed Agreement for Licensed Manufacturers quite carefully, and has obtained some advice on same.

"We are advised that this is legal, and there is no question but what it can be carried through all right. There are some questions, however, that would have to be settled, viz: the schedules and the differential in prices which would be allowed the different manufacturers. This, we suppose could be arranged satisfactorily to all parties concerned.

"There is one other part also which has not been touched upon, and which we think is very necessary, and that is the question of resale prices, the prices at which this material should be sold by the jobber to the plumber. These could be taken up and carried out.

"Aside from this, however, we would not care to have anything to do with it unless all the manufacturers of enameled ware were parties to the agreement. This, of course, includes The Standard Sani-

tary Mfg. Co. If they do not see their way clear to go into it, we think it would be better to let the matter drop. 1

"Yours truly,
"The Day-Ward Co.,
"Per A. G. Ward,
"W/F "F."

Q. I show you a letter dated January 12, evidently addressed by you to Mr. A. G. Ward, care the Day-Ward Company, Warren, Ohio, and ask you if you remember writing a letter about that date? A. Yes.

Mr. GROSVENOR: I offer that in evidence as Petitioner's Exhibit No. 79. 2

The paper referred to was then marked and filed as "Petitioner's Exhibit No. 79."

Mr. GROSVENOR: That letter reads as follows:

"Jan. 12th, 1910.

"Mr. A. G. Ward,
c/o The Day-Ward Co.,
Warren, Ohio.

"Dear Sir: 3

"Replying to your letter of the 11th with reference to License Arrangement would state that most of the Companies are favorable to the matter on the same basis as you are, *i. e.*, provided the Standard Sanitary Mfg. Company becomes a party to the Arrangement.

"Since writing you I have been to Louisville where I took the matter up with Mr. Ahrens and Mr. Dawes. The matter appeals to them in several ways and while they have not given me any definite answer, I believe it strikes them quite favorably. I had in mind the resale price feature and am preparing some papers with reference to this end of it so that when the matter is taken up I will have ready considerable information and data with reference to it. 4

"I think the question of differentials in prices among the Manufacturers can be arranged satis-

1 factorily to all parties concerned provided it is decided to go ahead with the matter.

"Yours very truly,"

Q. Now, I show you a letter dated March 12 and addressed to you by the Day-Ward Company, per A. G. Ward, and ask you if you remember receiving that letter?

A. Yes.

Q. Then I show you a copy of the letter to A. G. Ward purporting to be from you and dated March 15, 1910, and ask you if you remember sending such a letter? A. Yes.

2 Mr. GROSVENOR: I offer the letter of March 12, 1910, from Ward to Wayman as Petitioner's Exhibit No. 80.

The letter referred to was then marked and filed as "Petitioner's Exhibit No. 80."

Mr. GROSVENOR: That letter reads as follows:

"The Day-Ward Co.
Warren, Ohio.

March 12th, 1910.

3 To E. L. Wayman,
1509 Arrott Bldg.,
Pittsburgh, Pa.

Subject

"Dear Sir:

"Your letter of March 9th enclosing memorandum agreement arrived during the writer's absence. Would say that we will look this over. It has a great many good points, and we see no reason why this could not be drafted up and made to work satisfactorily.

4 "There is one point which has been left out, which the writer deems most important. That is the question of the orders which the manufacturers have on their books at present.

"Would say it will not be necessary for you to come to see the writer any particular time, but if you are in this part of the country, we wish you

would stop off, as there are several matters which we would like to talk over with you personally. 1

"Yours truly,

"The Day-Ward Company

"W/F "Per A. G. Ward (Signed)"

Mr. GROSVENOR: I will now offer the letter of March 15, 1910, to Mr. Ward in evidence as Petitioner's Exhibit No. 81.

The letter referred to was then marked and filed as "Petitioner's Exhibit No. 81."

Mr. GROSVENOR: The letter reads as follows: 2

"March 15th, 1910.

Mr. A. G. Ward,
c/o The Day-Ward Co.,
Warren, Ohio.

"Dear Sir:

"Replying to your letter of the 12th, I have secured the following signatures to the Memorandum of Agreement:

The McCrum-Howell Co.
Blairsville Enameled Ware Co. 3
National Sanitary Mfg. Co.
The Barnes Mfg. Co.
Standard Sanitary Mfg. Co.
L. Wolff Mfg. Co.
United States Sanitary Mfg. Co.
A. Weiskittel & Son Co.
The Humphryes Mfg. Co.
Union Sanitary Mfg. Co.

"I think the matter is now an assured success and I will arrange to see you some time the latter part of this week or possibly before that. I will 'phone you before hand so as to make sure that you are there. 4

"Yours very truly,"

Q. By the memorandum agreement referred to in that letter you mean the memorandum drawn up by you in March and which you testified you sent to some of the manufacturers and from others you obtained signatures?

1 A. The memorandum of agreement referred to in Mr. Ward's letter of March 12, is known as Exhibit 3, and I sent that to all the manufacturers containing the signatures I then had.

Q. This letter is a copy of a similar letter which you sent to the other manufacturers who did not sign?

A. That is right.

Q. About the time indicated? A. Yes, sir.

Q. I show you a letter dated April 7, addressed to Mr. A. G. Ward and purporting to be from you. Do you recall sending that letter out? A. Yes.

2 Q. Is that a copy of a similar letter addressed at the same time to the various manufacturers notifying them of the Mount Clemens meeting ? A. No.

Q. To whom did you send that notice of the Mount Clemens meeting?

A. I think to all the companies; that letter was sent to companies or firms from whom I received suggestions.

Q. You did, however, send notices to all the firms that there would be this meeting at Mount Clemens?

A. I think so.

Mr. GROSVENOR: I will offer that as Petitioner's
3 Exhibit No. 82.

The letter referred to was then marked and filed as "Petitioner's Exhibit No. 82."

Mr. GROSVENOR: That letter reads as follows:

"April 7th, 1910.

"Mr. A. G. Ward,
c/o Ward-Day Co.,
Warren, Ohio.

"Dear Sir:

"Replying to your letter of the 6th would state
4 that the Committee will start its session tomorrow at the Colonial Hotel, Mt. Clemens, Mich. If you think it advisable I am sure they would be glad to have you present to take up the matter in person. Your letter, however, is pretty clear on the matters you want and should any difficulties develop I will be glad to invite you to come to Mt. Clemens, if necessary.

"Yours very truly,"

Q. I show you four letters dated as follows: April 19, 1
which is a letter purporting to be a copy of a letter addressed by you to Mr. Ward. Do you recall sending that leter? A. Yes.

Q. I show you a letter of April 21, addressed to you by the Day-Ward Company and ask you if you recall receiving that letter? A. Yes.

Q. And the letter dated May 12 and addressed to you by the Day-Ward Company, do you recall receiving that?

A. Yes.

Q. And another letter addressed by you on May 16 to Mr. A. G. Ward; do you recall writing that letter? A. Yes. 2

Mr. GROSVENOR: I offer those four letters in evidence as Petitioner's Exhibits Nos. 83, 84, 85 and 86 respectively.

The letters referred to were then marked and filed as "Petitioner's Exhibits Nos. 83, 84, 85 and 86" respectively.

Mr. GROSVENOR: I will now read Petitioner's Exhibit No. 83. (Reading):

"April 19th, 1910.

"Mr. A. G. Ward, 3
c/o The Day-Ward Co.
Warren, Ohio.

"Dear Sir:

"Replying to your letter of the 18th would state that Mr. Weiskittel and Mr. Gates appeared before the Committee and signed the Agreements.

"Mr. Kohler advised me that after a consultation with his Attorney that he will not become a party to the Arrangement.

"Yours very truly," 4

Petitioner's Exhibit No. 84 reads as follows:

"The Day-Ward Co.
"Warren, Ohio, April 21, 1910.

"To E. L. Wayman,
1509 Arrott Bldg.,
Pittsburg, Pa.

"Dear Sir:

"We are returning communication from The McCrum-Howell Co., in regard to Hoy & Co.

"In regard to your letter W-4191001-1, would say we are very much disappointed that Kohler will not be a party to the agreement. We think we could get along without either Kohler or Iron City, but think it would be a great mistake to leave both of them out. Of the two, we would prefer to see Kohler in.

"Yours truly,
"The Day-Ward Co.
"Per A. G. Ward."

"W/F"

Petitioner's Exhibit No. 85 reads:

"The Day-Ward Co.
Warren, Ohio.

May 12th, 1910.

"To E. L. Wayman,
1509 Arrott Bldg.,
Pittsburg, Pa.

"Dear Sir:—

"Will you kindly send the writer the list of the Manufacturers of Enameled Ware who have signed the resale agreement, and also the exact percentage of output as represented by them?

"Also advise whether or not any progress is being made toward getting the signatures of those who did not sign at the New York meeting.

"Yours truly,
"The Day-Ward Co.,
Per A. G. Ward."

"W/F

By Mr. Grosvenor: 1

Q. This letter dated May 12—the New York meeting referred to there is what meeting? A. Of May 6th.

Mr. Grosvenor: I will now read Petitioner's Exhibit No. 86 (reading):

"May 16th, 1910.

"Mr. A. G. Ward,
c/o The Day-Ward Co.,
Warren, Ohio.

"Dear Sir:

2

"Replying to your letter of the 12th would state that I have received word from the Cahill Iron Works to meet them in Chattanooga with reference to signing up. The Blairsville Company advise me that they will have a representative here tomorrow regarding the matter and I understand that the Iron City Company has told several of their large jobbers that they will enter into the arrangement if they say the word. I understand that they are saying it to them from all directions, and I have no doubt but that they will come along.

3

"Mr. Ahrens and Mr. Torrance saw Mr. Murphy and Mr. Kohler at Chicago Saturday, but did not obtain much satisfaction. Mr. Ahrens is still on the job and will return tomorrow, at which time I will write you further.

"Yours very truly,"

By Mr. Grosvenor:

Q. Now, were you at that Chicago meeting? A. No.

Q. How did you know Mr. Ahrens and Mr. Torrance were there? 4

A. I asked Mr. Ahrens to go there and see them; I don't know how Mr. Torrance got there.

Q. He was just butting in?

A. Whether he was in the city and just went there or what—I don't recall.

Q. I show you a letter dated February 14, from Howard

1 T. Gates and then ask you if you remember receiving that letter? A. Yes.

Mr. GROSVENOR: I offer that letter in evidence as Petitioner's Exhibit No. 87.

The letter referred to was then marked and filed as "Petitioner's Exhibit No. 87."

Q. I show you a letter of January 10, 1910, addressed to you and signed J. L. Mott, per E. Hammann, and I ask you if you remember receiving that letter? A. Yes.

Q. I show you a letter addressed by you to Edward Hammann dated January 12, 1910, and ask you if you re-
2 call writing that letter? A. Yes.

Mr. GROSVENOR: I offer those letters as Petitioner's Exhibits Nos. 88 and 89 respectively.

The letters referred to were then marked and filed as "Petitioner's Exhibits Nos. 88 and 89," respectively.

Mr. GROSVENOR: I will now read Petitioner's Exhibit No. 87. (Reading):

"McCrum-Howell Co.,
"New York City, February 14th, 1910.
3 "Subject 'Resale Prices and Licenses Arrangement.'

"To E. L. Wayman,
1509 Arrott Bldg.,
Pittsburgh, Pa.

"Your letter of February 7th received. We have no design patents, which I take it is what you want. We have some shop patents, however, if you want patents of that kind.

"Regarding the differential to be used over Standard's published prices, would suggest 5% on the regu-
4 lar guaranteed label goods—this to include Schedule #1 and #3, and 2½% on the Red and Black Label tubs. We will probably operate eight furnaces the balance of the year.

"This answers your letter of the 11th as well.

"Yours very truly,
"Howard T. Gates,
"Secretary."

"HTG-EMT"

Q. Now, that letter of the 7th of February of yours, to which he referred, was similar or dealt with the same subjects as are contained in Petitioner's Exhibit No. 12, is that not right? 1

A. Yes, the circular letter asking for a list of patents.

Mr. GROSVENOR: I will read Petitioner's Exhibit No. 88. (Reading):

"The J. L. Mott Iron Works,

"New York City, January 10, 1910.

"Subject: Prices and Legal Arrangement. 2

"To E. L. Wayman,
1509 Arrott Bldg.,
Pittsburgh, Pa.

"Mr. E. L. Wayman,
Pittsburgh, Pa.

"Dear Sir:

"Since receiving yours of the 31st ult. the writer has been looking for the copy of the proposed Legal Arrangement that you sent some time ago but it must be mislaid. Will you kindly send another copy? 3

"Yours very truly,
"The J. L. Mott Iron Works,
"EH.AS." "E. Hammann."

Q. This letter is dated January 10 which I have just read, and it refers to your letter of the 31st ult.; the 31st ult. would be December 31, 1909. Do you recall sending a copy of the proposed "Legal Arrangement" at that time?

A. I am under the impression that that was a copy or outline of a proposed license agreement. 4

Q. That is earlier than the form which you sent two months later? A. Yes.

Q. That was then sent in December? A. Yes.

Q. Did you send that to the different licensed manufacturers?

A. I either sent it or handed it to them at different times as I had the opportunity.

1 Mr. GROSVENOR: I will read Petitioner's Exhibit No. 89. (Reading):

"January 12th, 1910.

"Mr. Edward Hammann,
c/o J. L. Mott Iron Works,
New York City.

"Dear Sir:

"Replying to your letter of the 10th I enclose you a duplicate memorandum of the papers that were forwarded to you. This is being considered favorably by the majority of the companies and I would be glad
2 to have your criticisms and suggestions as soon as practicable.

"The papers I am sending you will undoubtedly be subject to changes, but the idea in the main is given therein. The proposition would have to embody a resale price to the plumber to make it complete.

"Yours truly,"

Q. The resale price there referred to was finally adopted through the resale price-list which you issued, was it not?

A. Yes.

3 Q. I show you a letter dated April 29 and addressed to Mr. E. Hammann care of J. L. Mott Iron Works and ask you if you recall sending that letter?

A. Yes, and with the statement that the word "we" refers to my office force.

Mr. GROSVENOR: I offer that letter as Petitioner's Exhibit No. 90.

The letter referred to was then marked and filed as "Petitioner's Exhibit No. 90."

Q. Do you recall this letter of May 7 addressed to you by
4 Mr. Hammann? A. Yes.

Mr. GROSVENOR: I offer that letter in evidence as Petitioner's Exhibit No. 91.

Q. I show you a letter addressed by you to Mr. Hammann and dated May 10, 1910, and ask you if you recall writing that letter? A. Yes.

Mr. GROSVENOR: I offer that letter in evidence as Petitioner's Exhibit No. 92.

The letter referred to was then marked and filed as "Petitioner's Exhibit No. 92." 1

THE WITNESS: Yes, that recalls to my mind the memorandum which I made last evening where I desired to change my testimony with reference to the date when the license agreement was executed.

Q. That is the license agreement of the Mott Company?

A. Yes.

Q. On what date was it executed? A. May. 5.

Q. Then the answer should be changed to May 5?

A. Yes, the answer should be changed.

Q. To read what date? A. May 5. 2

Q. That changes the number signed on May 6 to how many? A. Thirteen.

Q. Here is another letter dated "On train, May 21st, 1910," and addressed to you and signed by Edward Hammann. Do you remember receiving that letter? A. Yes.

Mr. GROSVENOR: I offer that letter, then, as Petitioner's Exhibit No. 93.

The letter referred to was then marked and filed "Petitioner's Exhibit No. 93."

Q. I show you a letter dated May 26 and addressed to Mr. Edward Hammann and ask you if you remember sending that letter? A. Yes. 3

Mr. GROSVENOR: I offer that letter as Petitioner's Exhibit No. 94.

The letter referred to was then marked and filed as "Petitioner's Exhibit No. 94."

Mr. GROSVENOR: I will now read this letter which is Petitioner's Exhibit No. 90:

"April 29th, 1910. 4

"Mr. E. Hammann,
c/o J. L. Mott Iron Works,
New York City.

"Dear Sir:

"I have been unable to tell from your catalogs, what the list prices are without fittings. We are now making up the Price List on Licensed Ware and will you please have sent to me not later than the first of

the week, the following information on *all* your Enameled Iron Ware.

"List Price "Same as

Mott Plate No. Without fittings Standard Plate No.

Also in addition to the above information please include in your statement the *widths* of the Rims of your various makes of Enameled Iron Baths.

"Will you kindly put some one on this job so that I can have the information by the time asked for? I am sorry I could not have given you more notice.

"Thanking you in advance, I am,

"Yours very truly,"

Mr. GROSVENOR: I will also read Petitioner's Exhibit No. 91:

"On train near El Paso, May 7th, 1910

"Mr. E. L. Wayman,
"Pittsburg.

"Dear Sir:

"By this time I trust your long siege is over and that at your meeting in N. Y. this week final arrangements were consummated—sorry I could not be present.

"I will be in Old Mexico for about ten days and when I come out will want to know what is going on in our bus. world. Will you kindly send me, care Higgins Co., San Antonio, Texas, a copy of the Mfrs. Agreement (License) and the Jobbers Agreement with resale prices; I want to study them and issue the necessary bulletin to our branches and salesmen. Make my name on the envelope *very* large and plain so the H Co. will not open it by mistake; also put on the envelope 'to arrive.'

"A letter from you telling me the 'news' and items of interest will be welcome.

"Yours sincerely,

"Edward Hammann."

Petitioner's Exhibit No. 92 reads as follows: 1

"May 10th, 1910.

"Mr. Edward Hammann,
"c/o Higgins & Co.,
San Antonio, Texas.

"Dear Mr. Hammann:

"I was very glad to receive your letter of the 7th, written on the train near El Paso.

"We had our meeting, Friday of last week in the offices of Noble, Jackson & Hubbard, where we consummated the deal and signed the License Papers. 2 Your company could not have a representative on hand but greatly facilitated matters by transferring the patents to me, the day previous to the meeting, as well as executing the License Agreement.

"I enclose you copy of the License Agreement together with a copy of the Jobbers Agreement which may have some changes in it before it is finally issued.

"We think, possibly, that it might be well to have a meeting of all the salesmen sometime before the 1st of June, so that they may thoroughly understand the matter in detail and be able to re-tell it to the 3 jobbers in the manner it should be told."

Q. You mean there the salesmen of all licensed manufacturers? A. Yes.

Q. That is, they were to gather together and receive instructions as to how the provisions were to be carried out?

A. They were to gather together in my office so that I could instruct them in the meaning of the various details and paragraphs and how to figure prices, and give them general information on the subject.

Q. And the rules were to be the same for all the salesmen? A. Yes. 4

Q. Irrespective of which manufacturers they were connected with? A. Yes.

Q. (Reading): "We are now busy making up the Price List (I have six people besides myself working on it) and will be able to get everything out covering all the staples by June 1st. Sheets covering special material will follow as rapidly as possible.

"We all missed you very much, but inasmuch as you

were with us in spirit, it was some better than one or two people who were neither.

"Every one feels very enthusiastic about the matter and I believe it will be a success.

"As soon as you get time, I would appreciate a line from you.

"Yours very truly,"

Mr. GROSVENOR: Petitioner's Exhibit No. 93 reads as follows:

"On Train, May 21st, 1910.

"Dear Mr. Wayman:—

"Many thanks for yours of the 10th inst. and the copies of license and Jobbers Agreement.

"The list of mfrs. in the Jobbers Agreement includes Kohler and Iron City, which means, I take it, that the united efforts to draw them into the fold were successful; if so Mr. Jackson will be quite satisfied with the percentage of mfrs. represented.

"Discounts from resale prices— Why were these so materially reduced? Will the jobbers be content with 7½ and 5% and 5 & 5%?

"Price list— The preparation of this must be a huge task. May I ask you to send me, as much before June 1st as possible, a copy of the resale prices? I want to prepare our bulletin of instructions for branches and salesmen.

"You refer to 'a meeting of all the salesmen some time before June 1st.' How comprehensive will this meeting be and where held?

"I will be in Chicago Monday and Tuesday morning, c/o The J. L. Mott Iron Works, and in New York Wednesday.

"Yours truly,

"Edward Hammann."

Petitioner's Exhibit No. 94 reads:

"May 26th, 1910.

"Mr. Edward Hammann,
c/o J. L. Mott Iron Works,
New York, N. Y.

"Dear Sir:

"Replying to that part of your letter of the 21st

with reference to the margin of profit to the jobber. This figures from 17 to 21%, depending on the class of goods he purchased, as well as the quality. Full information regarding all the details will be sent you the same time as it is sent to the other companies. 1

"Yours very truly,"

Q. I show you a telegram which appears to have been sent on the Postal-Telegraph Commercial Cable, and signed, Francis J. Torrance, and sent to you. Do you recall receiving that telegram? A. Yes.

Mr. GROSVENOR: I offer that in evidence as Petitioner's Exhibit No. 95. 2

The telegram referred to was then marked and filed as "Petitioner's Exhibit No. 95."

Q. I show you a letter dated May 19th with the single word "Standard," and ask you if you recall sending that letter? A. Yes.

Mr. GROSVENOR: I offer that as Petitioner's Exhibit No. 96.

The letter referred to was then marked and filed as "Petitioner's Exhibit No. 96." 3

Mr. GROSVENOR: I will read this telegram which is marked "Petitioner's Exhibit No. 95." (Reading):

"Telegram.

"Postal Telegraph Commercial Cables.
"Received at
236 Fourth Ave., Phone 407 Court.
"137 G. W. 15 451p
"New York, May 19, '10.
"E. L. Wayman, 4
1500 Arrott Blg., Pgh.
"Kindly mail special delivery our Boston, New York and Phila. offices copies Jobbers agreement for Resale.

(Signed) Francis J. Torrance."

Q. As to the jobbers' agreement for resale there is

1 meant the agreements which the various licensed manufacturers entered into with the jobbers, is that right?

A. Not finally.

Q. What is meant, then?

A. The jobbers' license agreement which existed at that time.

Q. And which had already been considered? A. Yes.

Mr. GROSVENOR: Now I will read Petitioner's Exhibit No. 96. (Reading):

"W.-5191008-I

"May 19th, 1910.

2

"*Standard*

"In reply to a telegraphic request from New York by Mr. Torrance I enclose you herewith, copies in duplicate of the Jobber's Agreement. I am unable to send you a copy that will be finally adopted as these will not be out until next week, but the final copy will be substantially the same as the enclosed with some minor changes.

"The amount of rebate based on purchases still has to be determined for the various quantities. In

3 talking with any of the Jobbers please do not let these papers get out of your possession and return them to me as soon as you receive the revised copies. The discounts named on the first page have been reduced to 5%, inasmuch as this difference will exist in the Resale sheets between Carload and less than Carload Prices.

"Yours very truly,"

Q. That means the jobbers buy at carload prices and sell at less than carload prices?

A. Yes, if their sales are less than carloads.

4 Q. But, they buy at carload prices?

A. If they buy in carloads they do, and if not, then at less than carload prices.

Q. From all the manufacturers?

A. With the exception of manufacturing points.

Q. And what governs there?

A. Carload prices in any quantity.

Q. What are the manufacturing points?

A. Pittsburgh, Allegheny, New Brighton, Monaca.

Q. Where is Monaco? A. Pennsylvania. 1

Q. What factory is there?

A. The United States Sanitary Manufacturing Company; then, Zelienople, Pennsylvania; Baltimore, Maryland; Braddock, Pennsylvania; Chicago, Illinois; Cincinnati, Ohio; Elizabeth, New Jersey; Louisville, Kentucky; Mansfield, Ohio; Milwaukee, Wisconsin; Noblesville, Indiana; Salem, Ohio; Trenton, New Jersey; Uniontown, Pennsylvania; Warren, Ohio; Wheeling, West Virginia.

Q. Now, I show you a letter dated February 12, 1910, addressed to you and signed, L. C. Huesmann; what company is he associated with? 2

A. The Union Sanitary Manufacturing Company.

Q. Do you recall receiving that letter? A. Yes.

Mr. GROSVENOR: I offer that letter in evidence as Petitioner's Exhibit No. 97.

The letter referred to was then marked and filed as "Petitioner's Exhibit No. 97."

Q. I show you a letter dated February 22nd and signed by the Union Sanitary Manufacturing Company, per C. E. Gates, Second Vice-President and General Manager, and ask you if you recall receiving that letter? A. Yes. 3

Mr. GROSVENOR: I offer that letter in evidence as Petitioner's Exhibit No. 98.

The letter referred to was then marked and filed as "Petitioner's Exhibit No. 98."

Mr. GROSVENOR: I will read this letter which has been offered in evidence as Petitioner's Exhibit No. 97. (Reading):

"Union Sanitary Mfg. Co.,
Noblesville, Ind.
Indianapolis, Ind., Feb. 12, '10. 4

"Mr. E. L. Wayman,
1509 Arrott Bldg.,
Pittsburgh, Pa.

"Dear Sir:—

"Have your favor of the 11th inst. and wish to say in reply thereto—no doubt Mr. Gates will take this

matter up with you in reference to Patents and Preferential Discounts.

"Hoping that this will be satisfactory, remain

"Yours very truly,

"LCH" L. C. Huesmann."

Q. Who is Mr. Gates? A. He was the general manager.

Q. And the preferential discounts there are the manufacturers' special discounts? A. Yes, sir.

Q. And did Mr. Gates subsequently appear before the price and schedule committee? A. Yes.

Q. And this letter referred to your letter of the 11th, which is a letter similar to Petitioner's Exhibit No. 12, is it not? A. I believe it is.

Mr. GROSVENOR: I will read Petitioner's Exhibit No. 98. (Reading):

"Union Sanitary Mfg. Co.,
Noblesville, Ind.,
February 22nd, '10.

"Dear Sir:—

"Referring to your favor of the 7th, will state that we have no patents that would be of any benefit to any one.

"Regarding the preferential discount we are willing to secure the Standard Sanitary Mfg. Co.'s prices. Not their published prices but their actual prices on all ware.

"We expect to operate six furnaces during this entire year. We are now using four.

"Very truly yours,
"Union Sanitary Mfg. Co.,
Per C. E. Gates,
2nd Vice-Pres. & Gen'l. Mgr."

Q. I show you what appears to be a circular issued by you on May 11, 1910. Do you recall sending out that circular? A. Yes.

Q. Did you send it to all the licensed manufacturers?

A. In so far as I recollect, yes.

Mr. GROSVENOR: I offer that in evidence as Petitioner's Exhibit No. 99.

The paper referred to was then marked and filed as "Petitioner's Exhibit No. 99." 1

Q. I show you another letter of June 6, 1910, and addressed "To the Licensees." Do you recall sending that letter? A. Yes.

Mr. GROSVENOR: I offer that letter as Petitioner's Exhibit No. 100.

The paper referred to was then marked and filed as "Petitioner's Exhibit No. 100."

Q. I show you another circular dated May 11, and referring to copies of the resale price list and ask you if you recall sending that out? A. Yes. 2

Mr. GROSVENOR: I offer that paper as Petitioner's Exhibit No. 101.

The paper referred to was then marked and filed as "Petitioner's Exhibit No. 101."

Q. I show you a letter dated May 29, 1910, which appears to be a circular letter issued by you to the different licensees and referring to the meeting of manufacturers' salesmen to be had in Pittsburgh on Saturday, June 4, at your office. Do you recall sending that out? A. Yes. 3

Q. And that letter called the meeting in respect to which you testified a few minutes ago? A. Yes.

Mr. GROSVENOR: I offer that as Petitioner's Exhibit No. 102.

The letter referred to was then marked and filed as "Petitioner's Exhibit No. 102."

Mr. GROSVENOR: I will now read these exhibits. Petitioner's Exhibit No. 99 reads as follows:

"Edwin L. Wayman
Arrott Building
Pittsburgh 4

W-5111005-I
"May 11th, 1910.

"Under your license you will be required after June 1st to place a Label on every piece of ware shipped out, which will read approximately as follows:

1 "'This fixture is manufactured under the following United States Letters Patent.'

"Date. Serial Number.

"Kindly advise me by return mail how many of these Labels you will want in your first supply. They will come in the shape of rolls and perforated so that they may be torn off like stamps.

"Thanking you for a prompt reply, I am,

"Yours very truly,"

Petitioner's Exhibit No. 100 reads as follows:

2 "Edwin L. Wayman
Arrott Building
Pittsburgh

W-661011-I
June 6th, 1910.

"To the Licensees:

"Kindly advise me if you have received your License Labels and if you are using them. These Labels should be on all Ware manufactured after June 1st.

"Yours very truly,

3 "Licensor."

Petitioner's Exhibit No. 101 reads:

"W-5111001-I
May 11th, 1910.

"Will you kindly advise me by return mail how many copies of the Resale Price Book you will require for your salesmen and office use? I will send from this office the necessary copies to the Jobbers so that in naming your quantity, you need not take into consideration your customers requirements.

4 "Yours very truly,"

Petitioner's Exhibit No. 102 reads as follows: 1

"Edwin L. Wayman
Arrott Building
Pittsburgh

W-5291003-I
May 29th, 1910.

Salesmen's Meeting

"To the Licensees:

"It was suggested some time ago that just previous to the time that the Resale matter would take 2
effect that there be held a General Meeting of the Manufacturers' Salesmen and the details thoroughly explained to them; lack of time has thus far prevented this.

"In view of the fact that we now have an extra week's time, I would personally like to have the various Manufacturers' Salesmen meet me in Pittsburgh on Saturday, June 4th for the following reasons.

"It is almost impossible to thoroughly explain the matter to both Jobber and Salesman in any printed 3
matter that may be issued. I have tried to cover all points in the printed matter I have prepared, but the salesmen will be undoubtedly asked a lot of questions that they should be able to answer in the proper way.

"I have talked with several Jobbers who were absolutely opposed to the proposition in general but after the matter was thoroughly explained to them they became very enthusiastic. I would, therefore, like to have the individual salesmen know the story from A to Z and be prepared to re-tell it to their 4
Jobbers with a complete knowledge of the situation and in a convincing manner.

"Most of the salesmen do not know each other and I believe if they did know each other it would help to promote better harmony and enable them collectively to present this matter to the Jobbers in a better way than is possible under the present circumstances.

"Will you kindly telegraph me upon receipt of this

letter if you can have your salesmen in Pittsburgh Saturday so that I can make the proper arrangement to take care of them? Upon receipt of the replies, I will advise you definitely regarding the details.

"Yours very truly,

"Licensor."

Q. I show you two circulars addressed to the jobbing trade on your letterheads; one is addressed to Mr. F. J. Torrance, care of the Standard Manufacturing Company, is it not? A. Yes.

Q. They are dated May 28 and May 29, respectively. Do you recall sending them? A. Yes.

Q. You testified yesterday that these circulars were sent to the different licensed manufacturers, is that right?

A. Yes.

Q. The name F. J. Torrance appearing on these two circular letters indicates that these were sent from your office to the Standard Manufacturing Company? A. Yes.

Q. You produced them before on subpœna and you also produce them now? A. Yes.

Mr. GROSVENOR: I offer these circular letters as Petitioner's Exhibits Nos. 103 and 104, respectively.

The papers referred to were then marked and filed as "Petitioner's Exhibits Nos. 103 and 104" respectively.

Q. I show you a copy of a letter dated June 10, 1910, and addressed to The Western Supply Company, St. Paul, Minnesota, which was produced by counsel, and I ask you if that is a copy of a letter written by you to them and mailed on that date? A. Yes, sir.

Mr. GROSVENOR: I offer that in evidence as Petitioner's Exhibit No. 105.

The letter referred to was then marked and filed as "Petitioner's Exhibit No. 105."

Q. I show you a telegram addressed by you to the Atlas Supply Company, Muskogee, Oklahoma, dated June 17, 1910, and ask you if you remember sending them that telegram? A. Yes.

Mr. GROSVENOR: I offer that in evidence as Petitioner's Exhibit No. 106.

The telegram referred to was then marked and filed as "Petitioner's Exhibit No. 106." 1

Q. I show you another letter addressed by you to the Atlas Supply Company and dated June 22, 1910, and ask you if you remember writing them that letter? A. Yes.

Mr. GROSVENOR: I offer that as Petitioner's Exhibit No. 107.

The letter referred to was marked and filed as "Petitioner's Exhibit No. 107."

Mr. GROSVENOR: I will now read Petitioner's Exhibit No. 105: 2

"W-6101008-R.

"June 10, 1910.

"The Western Supply Co.,
St. Paul, Minn.

"Gentlemen:

"Replying to your letter of the 7th, it is impossible for me to give you permission to continue buying goods from the J. M. Kohler Sons Co., Sheboygan, Wis. This Company has been invited to execute a license agreement and use the patents of process, 3 but has not seen fit to do so. I would like to have them execute an agreement, but if they will not it is impossible to concede to any of their customers the right to purchase their goods if the customers desire to purchase licensed ware.

"I hope that you will take the matter up with them and try and convince them that they should manufacture goods in accordance with the other Companies.

"Yours very truly,

"Licensor." 4

I will also read Petitioner's Exhibit No. 106:

"Pittsburgh, Pa.,
"June 17th, 1910.

"Atlas Supply Co.,
Muskogee, Okla.

"If you will sign license agreement will authorize you to handle Kohler ware subject to resale terms

for a reasonable length of time with understanding that you will at once decrease your purchases and stock licensed ware and further sale of it and furnish me monthly statement of purchases from Kohler. Licensed Manufacturers desire to give all assistance possible to jobbers in order that they may make a fair margin of profit and do not desire to inflict any hardships but do believe they merit the support of all jobbers in this proposition. Southwest, Kansas City Pump, Young and Crane are supporting Licensed Manufacturers Reeves wires he has put resale into effect and intends to sign. Expect US Water will sign today. Wire answer.

"E. L. Wayman."

Q. What is "Southwest?"

A. That refers to the Southwest Plumbing Supply Company of Kansas City, that is the name of a jobber.

Q. What is "Kansas City Pump?"

A. That is the Kansas City Pumping and Supply Company.

Q. Who is "Young?"

A. That is W. B. Young Supply Company.

Q. And Crane? A. That is the Crane Company.

Q. Where are they located?

A. In Chicago and other places.

Q. They handle sanitary enameled iron ware and sell it throughout the west? A. Yes, all over the country.

Q. Would they be in competition with the Atlas Supply Company. A. Yes.

Q. Where is Reeves? A. In Kansas City.

Q. Would he come in competition with the Atlas Supply Company? A. Yes.

Q. (Reading): "Expect US Water;" who is the U. S. Water? A. That is a company in Kansas City.

Q. Are these names all names of prominent and large jobbers?

A. I would not consider them all large jobbers.

Q. Is there any larger jobber than Crane?

A. No, not collectively, but individually.

Q. You mean that Crane has a large number of branches?

A. Yes.

Q. Where are they?

A. In the principal cities, I could not say without referring to a printed list. 1

Q. Just point out in this blue book where they are?

A. Los Angeles, California; Oakland, California; San Francisco, California; Washington, District of Columbia; Atlanta, Georgia; Chicago, Illinois—that is the main office —Muncie, Indiana; Des Moines, Iowa; Sioux City, Iowa; Wichita, Kansas; Baltimore, Maryland; Boston, Massachusetts; Duluth, Minnesota; Minneapolis, Minnesota; St. Paul, Minnesota; Kansas City, Missouri; St. Louis, Missouri; Omaha, Nebraska; Fargo, North Dakota; Cincinnati, Ohio; Muskogee, Oklahoma; Oklahoma City, Oklahoma; 2 Portland, Oregon; Philadelphia, Pennsylvania; Watertown, South Dakota; Memphis, Tennessee; Dallas, Texas; Salt Lake City, Utah; Seattle, Washington; Spokane, Washington; Tacoma, Washington.

Mr. GROSVENOR: I will read Petitioner's Exhibit No. 107, which was a letter addressed to the Atlas Supply Company and dated June 22nd, 1910. (Reading):

"W-6221021-I

"June 22nd, 1910. 3

"Atlas Supply Company,
Muskogee, Okla.

"Gentlemen:—

"Answering your letter of the 18th, would state that if you will sign the Jobbers' License Agreements, I will authorize you to continue purchasing Kohler's Ware as outlined in my telegram of the 17th, with the understanding that you maintain the Resale Prices. Will you kindly acknowledge receipt of this letter? 4

"Yours very truly,"

Q. Have you retained your other correspondence with the Atlas Supply Company with reference to the signing of the contracts? A. I think so.

Q. Have you retained your correspondence with the Western Supply Company with reference to executing jobbers' license agreements? A. I think so.

Q. Will you produce that correspondence tomorrow?

A. Yes. May I amend an answer which I made?

Mr. GROSVENOR: Yes, what is it?

THE WITNESS: I wish to say that this is a copy of a letter which I addressed to the Western Supply Company under date of June 10, and the words "but if they will not, it is impossible to concede to any of their customers the right to purchase their goods if the customers desire to purchase licensed ware," that having been written in error.

Q. How ought it to read?

A. Well, it is not a truthful statement. I don't know what I might have said, but that is not a correct statement.

Q. Did you correct the original before you let it go out of your office?

A. No, but I corrected it later in talking with Mr. Sullwold.

Examination Suspended.

The taking of testimony was then adjourned to the third day of November, 1910, at ten o'clock a. m., at the same place.

Pittsburgh, Pennsylvania,
November 3, 1910.

Pursuant to adjournment the evidence for the Petitioner was resumed as follows, with same counsel present.

EDWIN L. WAYMAN, a witness heretofore produced and sworn, resumed the stand for continuation of direct examination and testified as follows.

DIRECT EXAMINATION (continued):

THE WITNESS: Yesterday you asked me a question with reference to a letter written by Mr. Sloman to Mr. Myler of the Standard Sanitary Manufacturing Company with reference to 300 shares of Universal Electric Welding Company's stock, and also with reference to a receipt sent by Mr. Myler to Mr. Sloman acknowledging receipt of this stock. I wish to com-

plete my answer of yesterday by reading these letters. 1

Mr. GROSVENOR: Let me look at them first. You can bring this all out on cross examination. You can introduce these letters in your own case without any objection from me. I don't see why they should come in here.

THE WITNESS: I should like to place them on the record now if you have no objection.

BY MR. GROSVENOR:

Q. Did you offer this electric stock to the People's Bank in Detroit as security for the loan? A. No. 2

Q. Was it necessary to have Standard stock as security for the loan?

A. It was necessary to have some stock whose value was recognized and known.

Q. With what officer of the bank did you conduct your business?

A. Mr. George H. Russell, president, a gentleman whom I have known for ten years and who was a stockholder in the Seamless Steel Bathtub Company, a concern with which I was formerly associated, his son having been secretary and treasurer of that concern and a very close friend of mine. 3

Q. Did you go to the bank before you offered the Standard stock?

A. Not until I had discussed the matter with Mr. Sloman.

Q. Did you offer to deposit the electric stock as security? A. No.

Q. Did the president tell you that you should give Standard stock? A. No.

Q. Where is that Standard stock now?

A. Mr. Myler has it.

Q. When was it returned to him? A. About August 20. 4

Q. 1910? A. Yes.

Q. That is the time when you paid your loan? A. Yes.

Q. And then the electric stock was returned as these papers show to Mr. Sloman?

A. Not at that time, Mr. Myler was away at the time, but he returned the stock when he returned. In other words, Mr. Myler had his Standard stock back some time before the electric stock was returned to Mr. Sloman. I

would like to offer these letters in evidence and place them on the record.

Mr. NOBLE: Counsel for defendants ask counsel for the Government to accede to the request of the witness that the letters which he has referred to, being dated April 29, 1910, and addressed to Mr. W. A. Myler, Pittsburgh, Pennsylvania, and signed by Mr. Eugene H. Sloman, and a receipt dated April 29, and signed by Mr. Wayman reciting the receipt from Eugene H. Sloman of Certificate No. 1030 of 300 shares of Universal Electric Welding Company's stock and the endorsement on the back thereof, likewise dated April 29, 1910, and signed by E. L. Wayman, and the letter dated May 2, 1910, addressed to Mr. Eugene Sloman, Detroit, Michigan, and signed by Mr. W. A. Myler, acknowledging the receipt of Mr. Sloman's letter of April 29, together with the certificate of Universal Electric Company's stock referred to, be read on the record now, they being the same papers which were held in the hands of counsel for the Government when he asked the witness, Wayman, the preceding questions as to what these papers show, saying, "as these papers show," and so forth. Counsel asks that they be read upon the record as requested by the witness at this time to complete his answers to certain questions asked him yesterday.

Mr. GROSVENOR: Counsel for the Government objects to the introduction of these papers now, although he is willing that they should be put in as part of the defendant's case and does not wish his record to be encumbered by these papers, the witness having testified yesterday as to the facts contained therein.

Mr. NOBLE: Counsel for defendants says in reply that it is evident that counsel for the Government is not willing to have his own witness complete his answers as requested by the witness in order that all the facts may more clearly appear upon the record with respect to the interrogatories addressed to the witness by counsel for the Government and the transactions referred to therein and in respect there-

to, and asks that the letters mentioned be marked for identification at this time. 1

Mr. GROSVENOR: Under the rules of procedure before the Examiner, the stenographer, of course, will write out these letters on the record, the objection of counsel for the Government being noted.

THE WITNESS: This letter is written on the letterhead of the St. Clair Heights Syndicate, Limited. It is dated, Detroit, Michigan, April 29, 1910, and reads as follows:

"Mr. W. A. Myler,
Pittsburgh, Pa. 2

"My dear Sir:

"Mr. E. L. Wayman was in to see about a subject we had often discussed while associated with the Seamless Steel Bath Tub Company, namely, all of the Patents owned by the Standard Sanitary Mfg. Co. and others used in the economical manufacturing of Enameled Ware, as I understand it he has negotiated far enough along so that now it becomes a question of money to carry out his plan. It is my disposition to help him, both financially and otherwise as our relations have been such that brotherly feeling exists between us. On account of my experience and negotiations in Seamless and Real Estate I have used up the limit of my credit at our local bank till I begin to realize on properties and securities I own. Consequently I cannot borrow on collateral, even which ordinarily they would accept from me or any of their customers. Therefore in order to assist Mr. Wayman I would like to deposit with you certain stock collateral namely, Universal Electric Welding Company of New York, certificate for which I have given to Mr. Wayman in exchange for which you could loan him an amount of priced or quoted stock on which he could borrow an amount equal to his needs of the banks here in Detroit. He will explain to you the method and manner by which this can be accomplished as we have both gone over the situation carefully. I am in hopes to have the actual money at a later date and will then pay his obligation and retire any collateral that may be used for 3 4

his purpose and benefit. The stock I am loaning Mr. Wayman has a value of about $75.00 per share and will increase as Mr. Wayman is aware of on account of advantageous royalty contracts they have. By assisting Mr. Wayman in the premises you will be doing him a favor without risk to yourself, which I will very much appreciate and hope to be able to reciprocate at some future period.

"Awaiting your decision, believe me,

"Most sincerely,

"Eugene H. Sloman."

Mr. NOBLE: Mr. Stenographer, will you mark that Exhibit No. 4 for identification, and note that it is offered by counsel for defendants.

The letter referred to was then marked as Exhibit No. 4 for identification, offered by counsel for defendants.

BY Mr. GROSVENOR:

Q. Did Mr. Myler suggest to you that he should loan you Standard Sanitary Manufacturing stock? A. No.

Q. You went and asked him for it? A. Yes.

Q. When did you go? A. May 2nd, the day I got it.

Q. Was any one there at the time? A. No.

Q. Did you ask him for any other stock? A. No.

Q. You specified Standard Manufacturing Company stock? A. Yes.

Q. Did any one suggest to you that you should have Standard Sanitary Manufacturing Company stock in making the loan? A. No.

Q. Did the bank at Detroit refuse to accept the Electric Company's stock as security for the loans?

A. I did not offer it to them.

Q. If Mr. Myler was willing to accept it, what made you think that the bank would not accept it?

A. On account of Mr. Sloman being heavily over-borrowed at the bank. Mr. Sloman suggested that would be the fact if I offered it to the bank.

Mr. GROSVENOR: That is all on that point.

The witness then read Exhibits Nos. 5, 6, 7 and 8 marked for identification at request of counsel for defendants.

THE WITNESS: Exhibit No. 5 for identification reads as follows: 1

"Detroit, Mich., April 29th, 1910.

"Received of Eugene H. Sloman Certificate No. 1030 for 300 shares of Universal Electric Welding Co.'s stock which I am using for the purpose of obtaining a loan on, which money I propose using to purchase certain enamel ware patents which will afterwards be leased out on royalty and I hereby agree out of the first money available to pay such loan as I may have negotiated and return said stock to said Eugene H. Sloman at the earliest date. 2

"E. L. Wayman."

Exhibit No. 6 for identification reads as follows:

"April 29th, 1910.

"I hereby agree and consent that the value at present of this stock is $75.00 per share, for which I obligate myself if the stock is not returned within seven (7) months from date.

"E. L. Wayman." 3

Exhibit No. 7 for identification reads as follows:

"Pittsburgh, U. S. A., May 2, 1910.

"Mr. Eugene H. Sloman,
Detroit, Mich.

"Dear Sir:

"Your letter of April 29th together with certificate of Universal Electric Co. #1030 for 300 shares of stock in the name of Maurice Lachman, and endorsed in blank by him, has been handed to me by Mr. Wayman, and is satisfactory as per your letter. 4

"Yours truly,

"W. A. Myler."

Exhibit No. 8 for identification reads as follows:

"Detroit, Mich.,
Aug. 20th, 1901.

"Mr. W. A. Myler,
Pittsburgh, Pa.

"Dear Mr. Myler—

"Enclosed herewith I am enclosing to you Certificate D 230 for 100 shares of Standard Sanitary Mfg. Co.'s stock upon which my loan here in Detroit was negotiated, which I have paid today in full. Mr. Sloman being with me and he requests at your early convenience that you return to him the certificate for 300 shares of the Universal Electric Welding Co.'s stock deposited with you. He desires me to express to you his appreciation of the favor shown and it is needless to say that I add my own.

"With kindest regards, I am,

"Yours truly,

"E. L. Wayman."

"P. S. For safety I am sending this via express."

BY MR. GROSVENOR:

Q. Mr. Wayman, the earliest exhibit or paper which we have so far introduced which in any way embodies certain of the terms of the licensing agreement, is the memorandum which you have testified you drew up on March 2nd after that meeting in Chicago?

A. Yes, in so far as it relates to a preliminary agreement that the various companies would execute some final license agreement form.

Q. Counsel for the defendants referred to you this morning as a witness for the Government, you having been called by the Government. You are a defendant in this case, are you not? A. Yes.

Q. You have been how many days on the witness stand?

A. Three.

Q. Do you confer with your own counsel every day?

A. No, not in detail.

Q. You see your own counsel every day outside of these sessions? A. At lunch.

Q. Just answer yes or no. A. Yes. 1

Q. You came to Court with counsel this morning?

A. Yes.

Q. You came to Court with counsel yesterday morning?

A. Yes.

Q. You came to Court with counsel the morning before?

A. Yes.

Q. Each day you have come to Court with counsel?

A. Yes, with the exception of yesterday; I did not come with counsel yesterday.

Q. Do you go to lunch with counsel? A. Yes.

Q. You spent the lunch hour with your counsel? 2

A. Yes.

Q. You have done so every day? A. Yes.

Q. Between the periods of examination by counsel for the Government here? A. Yes.

Q. During the days of examination by counsel for the Government have you gone over with your own counsel some of the details of the license agreement?

A. In so far as suggesting to my counsel certain points and asking him to bring them out to illustrate certain facts.

Q. You have been in daily consultation with him?

A. Yes. 3

Q. As to your side of the case? A. Yes.

Q. Your theory of the case?

A. No, the facts in the case.

Mr. GROSVENOR: I meant no insinuation or implication. I simply meant your theory of the law.

Mr. NOBLE: Counsel for defendants states that he has no objection to counsel for the Government inquiring of Mr. Wayman as to any or all the facts, or as to the fact that during the days referred to Mr. Wayman and the counsel for the defendants have been together from time to time, unless it is 4 intended thereby to suggest something reflecting upon the witness, Mr. Wayman. If so, counsel requests that the questions and answers just given should be so considered.

Mr. GROSVENOR: Counsel for the Government means no reflection upon either the defendant in this case or his counsel, in referring to these conferences. His only object is to bring out the fact

1 that the witness is a defendant and not in reality the witness of the prosecution as was stated previously, except as subpœnaed by the Government.

THE WITNESS: The witness further wishes to state that he has a perfect right to do this, inasmuch as the counsel for the Government has conferred with his witnesses.

BY Mr. GROSVENOR:

Q. Now, Mr. Wayman, going back to our March 2 memorandum of agreement, which you state you drew up on
2 that day, you have already stated that you had earlier memorandums of the proposed license agreement? A. Yes.

Q. And those you tore up? A. In so far as they—

Q. Just answer yes or no: Did you tear them up?

A. Yes.

Q. Now, I show you a paper and ask you if that is an earlier form than the March 2nd form of the license agreement?

A. Yes, a part of the wording of the proposed license agreement was written out three years ago.

3 Mr. GROSVENOR: Just read my question, please.

The stenographer then read the question.

Q. Is that an earlier form?

THE WITNESS: Just leave my answer as it is.

Mr. GROSVENOR: I asked you is that an earlier form?

THE WITNESS: I have answered.

Mr. GROSVENOR: Answer yes or no.

A. Yes, and some of the paragraphs in the form presented were compiled back as far as three years ago.

4 Q. Have you any of those earlier forms?

THE WITNESS: Of three years ago?

Mr. GROSVENOR: Yes.

A. Yes.

Q. Will you produce them in Court? A. I will.

Q. Have you any of the forms earlier than March 2nd forms other than the ones drawn up, as you say, about three years ago? A. Well, as it is related—

Mr. GROSVENOR: Just answer the question. Read him the question. 1

The stenographer then read the question.

THE WITNESS: I am trying to make my explanation clear to you.

Q. Answer this question: The memorandum of agreement of March 2nd is the earliest form we now have in evidence of any attempt to embody in writing the license agreement, is it? A. In so far as—

Mr. GROSVENOR: Just answer yes or no.

THE WITNESS: I cannot. 2

Mr. GROSVENOR: Read the question.

The stenographer then read the question.

Mr. NOBLE: Counsel for defendants objects to the question because the witness has a number of times testified that the paper of March 2nd was not an attempt to draw up a license agreement, but was a contract or agreement concerning the license agreement, and the earliest form which he has preserved of that paper; Exhibit No. 3 being the actual paper which the witness drew up at that time.

BY Mr. GROSVENOR: 3

Q. Mr. Wayman, look at these papers again; these first two sheets are entitled "Proposed Arrangement for Licensed Manufacturers." A. Yes.

Q. Does that paper refer to a proposed arrangement of licensed manufacturers of sanitary enameled iron ware?

A. Yes.

Q. When did you draw up that paper?

A. As near as I can remember some time in September.

Q. What year? A. 1909.

Q. After you became Commissioner of the Sanitary Enameled Ware Association? A. Yes. 4

Q. Did you send this to the different manufacturers, that is a copy of this, to the different manufacturers?

A. Not to all, as I remember.

Q. To how many of them?

A. I couldn't say; I talked with some of them, and to others I sent it, and to others I handed a rough outline which I kept on revising from time to time.

Q. And those eight pages attached to the first two beginning "this agreement made in duplicate this (blank) day of (blank) by and between E. L. Wayman," and so forth. Was that attached to these first two sheets? A. Yes.

Mr. GROSVENOR: I offer the first two sheets in evidence as Petitioner's Exhibit No. 108.

Papers referred to were marked and filed as "Petitioner's Exhibit No. 108."

Mr. GROSVENOR: I offer the eight pages referred to in evidence as Petitioner's Exhibit No. 109.

Papers referred to were then marked and filed as "Petitioner's Exhibit No. 109."

BY Mr. GROSVENOR:

Q. I will read this Exhibit No. 108. (Reading):

"'Proposed Arrangement for Licensed Manufacturers.'

"The execution of a Licensee Agreement with E. L. Wayman for the manufacture of Sanitary Enameled Iron Ware under patents owned by him covering Electric Dredgers, and under his right to grant Licenses for manufacturing Ware by Air Dredgers.

"The manufacturers to be divided into three classes according to the proportion their business bears to the whole."

You meant by their business, their business in sanitary enameled iron ware? A. Yes.

Q. And you mean there the proportion which their business bore to the whole business of all the manufacturers? A. Yes.

Q. (Continuing): "and to execute licenses to be known as follows and on the following terms:

Class A Manufacturers' License Royalty $1,500 per month."

The largest manufacturers were to be in that class?

A. Yes.

Q. (Continuing):

Class B Manufacturers License Royalty $1,200 per month.
Class C " " " 800 per month.

"At the end of the third month the above royalties will be subject to 95% rebates if the terms of the license have

been complied with and at the termination of each succeeding month a like rebate." 1

You contemplated there paying that rebate yourself?

A. Yes.

Q. (Continuing): "75% of the penalties deducted from the manufacturers violating agreement, to be divided among the Licensees in good standing for the month in proportion to the sum each Company's royalties bear to the whole."

By that 75 per cent. of the penalties you meant from the royalties accruing from the manufacturers in observing the license arrangement, isn't that right? A. Yes. 2

Q. (Continuing): "The division of the ware into four schedules as follows:

"Schedule 1 First Class Guaranteed Baths.
" 2 All other grades of Baths.
" 3 Small Ware—Lavatories, etc.
" 4 Roll Rim Sinks, One and Two Pieces Flat Rim Sinks.

"Price preferentials to be arranged something like the following." 3

By "price preferentials" you meant the differentials to be allowed the several manufacturers, is that right?

A. Yes.

Q. Now, at the time this rough form was sent out with the contract of eight pages which I have attached as Petitioner's Exhibit No. 109, you were not yet considering resale prices? A. Yes, I had that in mind.

Q. Does that appear here? A. No, not as I remember.

Q. You did not attach to these papers, then, a proposed licensed agreement for jobbers? A. No.

Q. That was drawn up, then, subsequent to September, 1909? 4

A. No, that was drawn up three years ago in a rough form.

Q. That was the time you were with the—

A. (Interrupting): Seamless Steel Bathtub Company.

Q. Did they make porcelain enameled iron ware?

A. They made porcelain enameled steel bathtubs which were similar to enameled cast iron bathtubs.

Q. Are there any more firms manufacturing that kind?

A. No, except a German concern, I think.

Q. It is not able to compete with sanitary enameled iron ware, is it? A. I believe it is.

Q. It can not be run on a paying basis, can it?

A. No—

Q. (Continuing): "In order that there may be some legal arrangement for holding together the various manufacturers of Sanitary Enameled Ware" what did you mean by that?

A. By keeping them working uniformly with respect to all shop conditions and practices and the use of uniform materials and uniform distributing methods.

Q. And uniform prices? A. Yes.

Q. And uniform discounts to jobbers? A. No.

Q. Uniform except in so far as they were to allow these special preferentials? A. Yes.

Q. Or, as they were later known, differentials? A. Yes.

Q. (Continuing): "and enable them to secure business on a continuous and profitable basis at price differentials that will insure each a fair proportion of the business, I wish to ask if your Company would be amenable to enter into a licensed patent arrangement with the writer along the lines of the attached proposed arrangement."

"Such an arrangement would not interfere with the association as it exists or the purpose for which it was organized. It does not mean a selling company or a pool, but simply legalized selling co-operation."

You mean by legalized selling co-operation a selling co-operation made lawful? A. No.

Q. Then, what did you mean?

A. I mean if all the companies were using manufacturing processes that were patented and valuable that it would be legal for me as owner of those patents to control the selling prices.

Q. For each of them? A. Yes.

Q. And their discounts? A. Yes.

Q. And their special preferentials? A. Yes.

Q. (Continuing): "It would be my idea to create a list of differentials for the various companies from a Standard price and these differentials subject to change as conditions varied, so that each Company would be treated fairly in proportion to the whole.

"I have taken this matter up with some of the Companies verbally and they are very much in favor of it." 1

At this time you say you had seen some of the manufacturers about a license agreement with you? A. Yes.

Q. And to others you gave copies of this agreement here known as Exhibits Nos. 108 and 109?

A. That, or a similar one. I changed it so often that I cannot remember whether that is the one which I gave them or not.

Q. But you gave them from time to time new forms as you made the changes?

A. Yes, sir, as my ideas were formed. 2

Q. And you were in constant consultation with the various manufacturers?

A. Yes, but not with respect to changes embodied in the form which I issued from time to time. Those changes were the result of my own judgment as I became more and more in touch with the conditions.

Q. You would give a manufacturer one of these contracts; you then went and saw him and asked him if he would join, is that it? A. Not at that time.

Q. Would you ask him if he were favorable to it?

A. I would, for instance, ask him to look over the paper. 3

Q. And then he would state whether or not he had objections to it?

A. No, I simply handed the papers to him and then talked to him with the idea of finding out if he would be in favor of such a proposition or method of conducting the enameled iron ware business, if the details should be satisfactorily worked out.

Q. And in trying to ascertain in your own mind for your own purposes whether the details could be worked out, you tried to find out if he had objections to the form which you had given him? 4

A. I tried to ascertain whether or not he had objections to the general plan of entering into a license agreement.

Q. And, if he had objections and so stated to you, you then asked what were his objections?

A. I usually presented the best arguments that I could think of.

Q. (Continuing): "Will you kindly look over the attached papers and let me have your ideas in the matter

as early as possible? If the matter appeals to those with whom I have not talked as favorably as I think it will, I can arrange to put the arrangement into working order by January 1st, 1910."

Have you preserved a copy of this Mr. Wayman?

A. No, I have not.

Q. Between September, 1909, and March 2, 1910, did you issue other forms of contracts to different manufacturers? A. I am under the impression that I did.

Q. Have you retained any copies of those?

A. No, for the reason—

Mr. GROSVENOR: Strike out the reason. Your counsel can bring that out.

Mr. NOBLE: Counsel for defendants objects to counsel for Government not permitting witness to finish his answer.

Mr. GROSVENOR: The question was simply whether he preserved it, that is all.

Mr. NOBLE: And the witness wanted to say why he did not preserve it.

Q. Why haven't you got any of those forms which you made?

A. Because I used the last one I had for sending it to one of the manufacturers who had not received one or having been through with them I simply threw them away. Very often I ran out of papers which I did not have time to make copies of, and the reason I did not make copies of them at the time was for the reason that I did not consider them of sufficient importance.

Q. This paper was not drawn up in December, but in September, 1909, and from that month until the final execution of the papers on May 6th in New York City, your best efforts were used to bring about a consummation of this plan?

A. I used all the spare time I had to bring about this idea which I had had in mind for several years.

Q. You were seeing the different manufacturers?

A. Yes.

Q. And writing to them? A. Yes.

Q. And talking to them at the meeting or after the meetings?

A. The preliminary—or, in fact, all the conversations

I had were conducted either after the meeting or at lunch 1
times during the days the meetings were held.

Q. I will now go over some of the terms of Exhibit No. 109, which was the agreement you state was drawn up by you in September, 1909, and accompanied the last exhibit. This agreement contemplated the divison of the manufacturers into three classes, is that right? A. Yes.

Q. The strongest or the largest manufacturers were put in Class A; the second largest in Class B, and the smallest in Class C? A. Yes, with respect to size.

Q. Eventually the distinctions between the manufacturers were made by virtue of the differentials, is that 2
right? A. Yes.

Q. The class feature was eliminated? A. Yes.

Q. Had you at that time decided what patents should be assigned to you?

Mr. NOBLE: I object to the question as containing a suggestion.

Q. Had any patents at that time been assigned to you?

A. No.

Q. Had you an option on any patents?

A. No—that was in September.

Q. Yes, in September, 1909? A. No. 3

Q. Had you any special patents in mind? A. Yes.

Q. State those, please.

A. I had the Arrott patent in mind principally.

Q. What other patents?

A. And a patent of the Iron City Manufacturing Company known as the Nesbit patent.

Q. And what other or others?

A. Any enameling patents that might have existed. I was not familiar with all the patents that were in existence at that time.

Q. But you were prepared to secure assignments of any 4
of them that might have existed?

A. Yes, I was trying to secure assignments.

Q. You said you secured the options on those patents in the latter part of September, 1909?

A. I secured an option on a patent in the latter part of 1909, option on an application for a patent in 1909, and another option early in January, 1910.

1 Q. You testified that you paid no consideration for the option on any of those patents? A. No.

Q. No consideration for the option at that time?

Mr. NOBLE: I object to the use of the word "consideration."

A. No.

Q. Did you pay anything in the latter part of 1909 for any one of those three patents? A. No.

Q. The first time you paid anything was in May, 1910?

A. Yes.

2 Q. In March, 1910, you sent a license agreement around that had on it about 15 patents; do you remember that?

A. Yes.

Q. Had you secured options on those 15 in the same way as the options on the Arrott patent, Lindsay and Ditheridge patents? A. Yes.

Q. Had you paid anything for any one of those options?

A. No—I beg your pardon, I wish to amend that answer; I included some patents in that list on which I had not secured options.

Q. You mean by not having secured options that you

3 had not received the consent to sell? A. To sell, yes.

Q. Did you draw this form up, Mr. Wayman (indicating)? A. As I remember that form, yes.

Q. Now, paragraph 9 reads: "The Licensee shall pay the following royalties for License herein granted, to wit: Class A License $1,500 per month."

The agreement as finally consummated in May provides for royalties on furnaces operated, does it not? A. Yes.

Q. This agreement provided for royalties per month on the license for patents? A. Yes.

Q. That is, in this contract the basis was to be the size

4 of the manufacturer in estimating the amount of the royalty?

A. Yes rough figures having been placed there without any figures in view.

Q. This paper continues, paragraph 10: "This agreement is entered into as a Class (blank) License, with the following price differentials:" There are no differentials stated. That was a matter not yet determined?

A. That was a matter I had not yet determined upon.

Q. When you discussed the matter with manufacturers didn't they want to know what their differentials were to be? 1

A. No, at that time hardly any details were discussed. It was simply to embody the idea in the main.

Q. That was in September, 1909? A. Yes.

Q. Now, paragraph 10 says: "This agreement is entered into as a Class (blank) License, with the following price differentials: (Subject to exceptions in paragraph 11) Selling Discount from Price List issued by the Licensor.

"Schedule 1 First Grade Guaranteed Baths;

Schedule 2 All other Grades of Bath; 2

Schedule 3 Small Ware—Lavatories, etc.;

Schedule 4 R. R. Sinks—1 & 2 pieces Flat Rim Sinks; but may be changed to either Class (blanks) or Class (blank)." Does that mean the manufacturer may be changed from class to class?

A. Having in mind the differentials.

Q. That is, the differential of the manufacturer would be changed? A. Yes.

Q. I will read on: (Reading): "when notified in writing by the Licensor, upon two thirds vote of all the companies operating under a similar license or upon the 3 recommendation of an executive committee appointed by the various companies for this purpose." You remember that provision? A. Yes.

Q. That provision contemplates, does it not, the appointment of an executive committee? A. Yes.

Q. You finally, by your arrangement of May 6, 1910, had appointed a commission?

A. As representing the other manufacturers.

Q. That commission, you have testified, was elected by vote of the manufacturers after they entered into the licensing arrangement on May 6th? A. Yes. 4

Q. Directly after the signing of these agreements?

A. Yes.

Q. (Continuing): "It shall be the particular and special charge of this committee to consider any complaints which may be made by any member to the effect that the actual working of the classification under which any particular Company may be working is to the detriment of the others and to make recommendation which may tend to remedy such inequality, it being the intent that from time

1 to time such measures as may be deemed equitable for the relief of any Licensee, may be adopted as provided for.

"(11) The following Companies shall be quoted (blank) per cent. discount from the prices established by the Licensor, on all schedules."

Then, there is a blank; you had not at that time determined what companies should be placed under that provision?

A. I do not recall what I had in mind in that paragraph.

Q. At any rate, that paragraph is blank?

A. Yes; I cannot remember the circumstances or ideas I
2 had in connection with that paragraph.

Q. I will read the next paragraph which follows:

"The following Companies shall be quoted (blank) per cent. discount from the prices established by the Licensor, on all schedules."

There is no enumeration of companies after that paragraph either, is there? A. No.

Q. Now, paragraph 13 reads: "If at the end of the third month of the first year (said year beginning [blank])" you had not yet determined when it should begin? A. No.

3 Q. Why not?

A. Because I did not have my plans in such shape as to find out whether the companies would enter into a licensing agreement.

Q. (Continuing): "it shall appear that the Licensee has during the first month complied with all the terms of this agreement, the Licensor shall credit the Licensee upon its next succeeding payment hereunder the following rebates from the royalties paid for said License for said first month's royalties, to wit: 95% of the amount originally paid by the Licensee."

4 That was subsequently changed to what?

A. In the final license agreement it reads 80 per cent.

Q. Paragraph 15 reads: "In case of failure on the part of the Licensee to comply fully with the terms of this agreement during any month, the Licensor may withhold any and all unpaid rebates and declare the same forfeited (as hereinafter provided for) as penalty for said violation and shall at once notify the Licensee to that effect. Penalties shall be deducted from all unpaid rebates at the rate of

$1,000.00 for each violation and 75 per cent. of all penalties 1
retained by the Licensor will be divided among the Licensees in good standing during the month, in proportion to the amount each Company's royalty bears to the amount to be divided." Then, paragraph 20 reads as follows: "This agreement is binding upon the parties hereto, and the successor and assigns of each of them, and shall continue in force for a period of five (5) years from the date hereof." The period finally determined upon was what?

A. Two years.

Q. Then, there is a page here which enumerates four schedules and states that the Class A manufacturers shall 2
receive or pay net prices—which should that be, and what does that mean?

A. That is at whatever prices I might establish.

Q. And the Class B at 2½ per cent. discount? A. Yes.

Q. And Class C at 5 per cent. discount? A. Yes, five.

Q. Then, there is a list of 19 manufacturers of sanitary enameled iron ware; those are the names of the corporation defendants in this case, with what exceptions?

A. Those are the names of the corporation defendants in this case with the exception of the Clymer Manufacturing Company, the Blairsville Enameled Ware Company, The 3
Iron City Sanitary Manufacturing Company, J. M. Kohler Sons Company.

Q. And on the last page there is a calculation as to the amount of royalties which each of those 19 companies would probably pay as classified? A. Yes.

Q. And then a calculation that 95 per cent. rebate would leave yearly $12,600? A. Yes.

Q. That means $12,600 as returns to the Licensor, is that right? A. Yes.

Q. Out of which he had to pay expenses? A. Yes.

Mr. GROSVENOR: Counsel for defendants have pro- 4
duced certain letters between E. L. Wayman and the Western Supply Company, which were asked for by counsel for the Government, and which I will offer in evidence as follows: I offer as Petitioner's Exhibit No. 110 the letter addressed to Mr. Edwin L. Wayman, Pittsburgh, Pennsylvania, by the Western Supply Company, per J. L. Sullwold, dated June 7, 1910.

Letter referred to was then marked and filed as "Petitioner's Exhibit No. 110."

Mr. GROSVENOR: That letter reads as follows:

"Saint Paul, Minn., June 7, 1910.

"Mr. Edwin L. Wayman,
Pittsburgh, Pa.

"Dear Sir:—

"As we purchase our small enameled ware principally from J. M. Kohler Sons Co., Sheboygan, Wis., we ask you for a written permission to continue to sell this commodity, so that we may continue to deal with this concern, whose goods we have illustrated in our catalogue and enjoy the full rebates of the licensed jobbers' agreement.

"Yours very truly,
"Western Supply Co.,
"dict. J.L.S. Per J. L. Sullwold."

I also offer a letter of July 9 addressed to Mr. J. L. Sullwold, care of the Western Supply Company, and purporting to be from Mr. Wayman, as Petitioner's Exhibit No. 111.

Letter referred to was then marked and filed as "Petitioner's Exhibit No. 111."

Mr. GROSVENOR: This letter reads as follows:

"W-791022-I

"July 9th, 1910.

"Mr. J. L. Sullwold,
c/o The Western Supply Co.,
St. Paul, Minn.

"Dear Sir:—

"Referring to our conversation in Chicago with reference to Jobbers' License Agreement, I had hoped to take the matter up further with you the next day but was unable to locate you.

"In accordance with our conversation, I wish to supplement my letter of June 10th with the following:

"'If you will execute the Jobbers' License Agree-

ment, it will be satisfactory for you to continue pur- 1
chasing Ware made by the J. M. Kohler Sons Co., Sheboygan, Wis., until further notice, with the understanding that you will stock some Licensed Ware and push the sale of it and that you will furnish me with the amounts of your total purchases from the Kohler Co. monthly. These amounts need not be itemized.'

"I hope that Mr. Kohler will in the future see fit to manufacture Ware under Patents that I own for the reason that I believe he can make better goods than he is making at the present time and more 2
economically. I had hoped to go further into the matter with you on the next day, but will try and see you again in Chicago when you find it convenient to be there if you will let me know.

"I am very pleased to make your acquaintance and trust we will become better acquainted in the future.

"With kind regards and trusting that you reached home safely, I am,

"Yours very truly,"

Mr. GROSVENOR: I then offer the letter of July 11, 3
which is addressed to Mr. Wayman from Mr. J. L. Sullwold, as Petitioner's Exhibit No. 112.

Letter referred to was then marked and filed as "Petitioner's Exhibit No. 112."

Mr. GROSVENOR: That letter reads:

"Saint Paul, Minn., July 11, 1910.

"Mr. E. L. Wayman,
Pittsburgh, Pa.

"Dear Sir:—

"Yours of the 9th at hand and noted. I beg to 4
state that the proposition outlined in your letter is an insult to any one of ordinary intelligence and our Company will now take the stand that we will use all honorable means to break up this illegal combination.

"We shall continue to use Kohler goods.

"Yours respectfully,

"dict. J.L.S. "J. L. Sullwold."

1 Mr. GROSVENOR: And I offer the reply addressed to Mr. J. L. Sullwold, care of the Western Supply Company, dated July 14, as Petitioner's Exhibit No. 113.

Letter referred to was then marked and filed as "Petitioner's Exhibit No. 113."

Mr. GROSVENOR: This letter reads:

"W-7141005-C

July 14, 1910.

"Mr. J. L. Sullwold,
2 c/o Western Supply Co.,
St. Paul, Minn.

"Dear Sir:

"This is to acknowledge receipt of your letter of the 11th inst., for which please accept my thanks.

"Yours very truly,"

Mr. GROSVENOR: Counsel has produced certain letters exchanged between you and the Atlas Supply Company of Muskogee, Oklahoma, which I will offer in evidence as follows: The first is the letter of
3 June 30th, 1910, from the Atlas Supply Company, per H. P. Bowser, to you. I offer that as Petitioner's Exhibit No. 114, without the stamp.

Letter referred to was then marked and filed as "Petitioner's Exhibit No. 114."

Mr. GROSVENOR: Petitioner's Exhibit No. 114 reads as follows:

"June 30th, 1910.

"Mr. E. L. Wayman,
Pittsburgh, Pa.

4 "Dear Sir:

"Acknowledging your telegram of June 27th relative to the agreement covering Sanitary Licensed Enamel Ware. I have gone over this matter carefully with our people and have been advised under present conditions not to sign any contracts or agreements. Our prices conform with those of licensed manufacturers and should we decide to make any

changes in them we will be glad to furnish you with our new selling prices. 1

"Yours respectfully,
"Atlas Supply Company.
Per, H. P. Bowser,
"Secretary & Treasurer."

I offer this letter of July 12, 1910, also addressed to you, from the Atlas Supply Company, as Petitioner's Exhibit No. 115.

Letter referred to was then marked and filed as "Petitioner's Exhibit No. 115."

Mr. GROSVENOR: That letter reads: 2

"July 12th, 1910.

"Mr. Edwin L. Wayman,
Arrott Bldg.,
Pittsburgh, Pa.

"Dear Sir:

"Acknowledging your favor of July 10th will say that I replied to your telegram of July 17th and fully explained our position in regard to the jobbers license agreement. This letter was not directed properly and was returned to us last Saturday, at which time we forwarded it to the proper address. Suppose you have received it by this time. 3

"Yours respectfully,
"Atlas Supply Company,
Per, H. P. Bowser,
"HPB/TW" Secretary & Treasurer."

I then offer in evidence a telegram dated July 11, 1910, from the Atlas Supply Company to you, as "Petitioner's Exhibit No. 116."

Telegram referred to was then marked and filed as "Petitioner's Exhibit No. 116." 4

And your reply, which is dated July 11, 1910, addressed to the Atlas Supply Company, I offer as Petitioner's Exhibit No. 117.

Letter referred to was then marked and filed as "Petitioner's Exhibit No. 117."

Mr. GROSVENOR: These Exhibits Nos. 116 and 117 read as follows:

1 "Muskogee, Okla., July 11, '10.

"Edwin L. Wayman,
Arrott Bldg., Pgh.

"Kansas City jobbers are quoting Kansas City resale price on enamel ware in Oklahoma irrespective to resale prices.

"Atlas Supply Co."

"Pittsburgh, July 11, 1910.

"Atlas Supply Co.,
Muskogee, Okla.

2 "Please send me definite information, if possible regarding Kansas City Jobbers prices in your territory. It would simplify situation if you would sign License Agreement regarding which I wrote you yesterday.

"E. L. Wayman."

I now introduce as Petitioner's Exhibit No. 118 a night letter telegram addressed to you by the Atlas Supply Company and dated June 17, 1910.

Paper referred to was then marked and filed as
3 "Petitioner's Exhibit No. 118."

Mr. GROSVENOR: That reads as follows:

"Muskogee, Okla., June 7th, '10.

"E. L. Wayman,
Arrott Bldg., Pittsburgh, Pa.

"In event we execute license agreement will we be permitted to purchase ware from Kohler. Your wire received. Have Kansas City jobbers adopted the agreement.

"Atlas Supply Co., 11.27 p. m."

4 The reply to that telegram was introduced by counsel yesterday. The next is a letter dated July 10, from you to the Atlas Supply Company, and I offer that as Petitioner's Exhibit No. 119.

Letter referred to was then marked and filed as "Petitioner's Exhibit No. 119."

Mr. GROSVENOR: This letter reads as follows:

"W-7101043-C
July 10, 1910.

"Atlas Supply Co.,
Muskogee, Okla.

"Gentlemen:

"I have not received reply to my telegram of June 17th and letter of the 22nd, and would thank you to advise me if you can see your way clear to execute the Jobbers' License Agreement on the terms contained therein; and also if you are maintaining the present resale prices.

"Thanking you in advance for reply, I am
"Yours very truly,"

Then there is another letter dated June 15 and addressed to the Atlas Supply Company which I offer in evidence as Petitioner's Exhibit No. 120.

Letter referred to was then marked and filed as "Petitioner's Exhibit No. 120."

Mr. GROSVENOR: That letter reads as follows:

"W-7151022-C

"July 15, 1910.

"Atlas Mfg. Co.,
Muskogee, Okla.

"Gentlemen:

"Answering your letter of the 30th ultimo, I am trying to arrange a meeting of some of the Jobbers in your territory who have not signed the License Agreement. Your territory is about the only exception in the whole country where any trouble seems to exist, and it would seem that a joint conference between the parties interested should have the desired result.

"Would you be willing to attend such a meeting if held in Chicago?

"Yours very truly,"

Q. Did you have such a meeting? A. Yes.
Q. Where was it? A. At the La Salle Hotel, Chicago.

1 Q. Who was present?

A. May I have that blue book? (Referring to book.) A representative from the Midland Plumbing Supply Company of Davenport, Iowa. A. Y. McDonald of McDonald & Morrison Manufacturing Company, Dubuque. Mr. Leighton of the Leighton Supply Company, Fort Dodge. Mr. Kretschmar of the Kretschmar Manufacturing Company, Dubuque, Iowa.

Q. Is that all you recall?

A. I think there was one more.

Q. Was Mr. Bowser there? A. Yes.

2 Q. Has Mr. Bowser signed? A. No.

Q. The Atlas Supply Company did not sign? A. No.

Q. Did you discuss the price list with those jobbers at the Chicago conference?

A. Only in so far as the zone in which Davenport and Dubuque were located.

Q. In what zone are those cities located?

A. They were at that time in Zone 3; they are now in Zone 1.

Q. What is Oklahoma in? A. Zone 5.

Q. Are these the jobbers referred to in this correspond-
3 ence (indicating)? You say in your letter of July 15 to the Atlas Supply Company, "I am trying to arrange a meeting of some of the jobbers in your territory who have not signed the license agreement." The territory referred to there was Oklahoma; these jobbers were all in Iowa or one or two other states?

A. Yes; there were no Kansas City or Oklahoma people there, but these people may do business in that territory.

Mr. GROSVENOR: I introduce as Petitioner's Exhibit No. 121 a letter addressed to Wayman and dated June 18, 1910, from the Atlas Supply Com-
4 pany.

Letter referred to was then marked and filed as "Petitioner's Exhibit No. 121."

Mr. GROSVENOR: That letter reads as follows:

"June 18th, 1910. 1

"Mr. Edwin L. Wayman,
Arrott Bldg.,
Pittsburg, Pa.

"Dear Sir:

"Acknowledging your favor of June 16th will say that since we opened up here a year ago this spring we have handled quite a bit of Kohler's Enamel Ware. Before we ordered our opening stock we corresponded with a number of the leading Enamel Ware manufacturers and tried to purchase material from them. A great many of them had their ware tied up with other jobbers, who had the exclusive sale of this territory and were therefore unable to supply us. 2

"The Kohler people offered us a very nice proposition and we decided to handle their ware. They have used us very nicely and their goods have given excellent satisfaction, and we have worked up a very nice business, and were we to change our ware at the present time, it would mean quite a loss of business to us. 3

"I have recent advice from the Kohler people, saying that they were willing to maintain the same price as licensed manufacturers. If they do this and we maintain resale prices I see no reason why we should not be allowed to purchase material from them.

"When we wrote for prices to the different concerns for our opening stock we received quotations from several and at the price that they quoted us it would have been impossible for us to compete with other jobbers, as Crane Company and Kansas City jobbers were selling bath tubs, etc., at very near the price which some of the manufacturers wanted for the same material from us. The Kohler people have taken excellent care of us and have put us in position whereby we are on equal footing with other jobbers. For these and other reasons we do not feel like making a change at the present time. 4

"We trust that you will see it in this light and

1 that we may receive your permission to continue the present relation already established.

"Yours respectfully,

"Atlas Supply Company,

Per H. P. Bowser,

"HPB/TW Secretary & Treasurer."

BY Mr. GROSVENOR:

Q. I show you a letter dated August 17, 1910, and ask you if you recall sending out such a letter?

THE WITNESS: Whom to?

2 Mr. GROSVENOR: To any one. Do you recall writing such a letter?

A. Yes.

Q. To whom was it issued? A. I cannot say.

Q. Was it sent out generally as a circular? A. No.

Q. Was it sent out to jobbers?

A. It was addressed to some jobbers whose name I cannot remember.

Q. To one jobber?

A. Yes, it may have been to several, but I cannot remember the names.

3 Q. Was it the Atlas Supply Company?

A That I cannot recall.

Q. But you do identify the letter?

A. Yes, as having been sent to some jobber.

Mr. GROSVENOR: I offer that letter in evidence as Petitioner's Exhibit No. 122.

Letter referred to was marked and filed as "Petitioner's Exhibit No. 122."

Mr. GROSVENOR: This letter reads:

"W-8171013-C

4 "Pittsburgh,

Aug. 17, 1910.

"Gentlemen:—

"Will you be kind enough to advise me if you are purchasing Enameled Iron Ware from the J. M. Kohler Sons Co.?

"Thanking you in advance, I beg to remain,

"Yours very truly,

(Signed) E. L. Wayman."

Q. I show you two letters, one dated June 14, 1910, and signed "Hotchkiss, Vail & Garrison Company," and I ask you if you remember receiving this letter from them, and I show you another letter and ask you if that is your reply to the letter which I first showed you? 1

A. Yes.

Mr. GROSVENOR: I will offer this letter as Petitioner's Exhibit No. 123.

Letter referred to was then marked and filed as "Petitioner's Exhibit No. 123."

Mr. GROSVENOR: Petitioner's Exhibit No. 123 reads as follows: 2

"June 14, 1910.

"Mr. Edwin L. Wayman,
Pittsburgh, Pa.

"Dear Sir:

Re: Jobbers License Agreement

"We want to write you, very frankly, asking for a correct interpretation of this agreement, as it affects our own particular position. Doubtless you have had many inquiries from jobbers throughout the country, and these points may have been brought to you, or they may have been gone over thoroughly by you previously. We do not know whether we are particularly obtuse, but a little enlightenment from you will be gratefully received. 3

"In the first place, we belong to a class of jobbers of peculiar situation and indigenous to various localities. We have established an attractive showroom and have been handling only the Highest Grade of Plumbing Fixtures in general. We handle no galvanized boilers, pipe, solder or plumbers' supplies generally, confining our business strictly to fixtures especially equipped with particular brass goods, to make them complete. These, by our own efforts, are specified by the architects, in their various building operations, and usually a job of plumbing comes to us with all the fixtures complete for the building, whether it be residence, hotel, office building, school or bank, and the contract is made with the plumber for a stipulated amount of money for 4

the entire fixtures complete as given to him in our list. You can, naturally, see from this that we are no menace to any License Agreement as far as cutting of the price is concerned. In fact, we are more interested in maintaining a high price than any other class of jobbers, but the one clause in the Agreement which will work a hardship to us is, the Lump Sum Paragraph #4 under General Conditions. For instance—The 'Morris' Tub of the Standard, or the 'Superb' Tub of U. S. Sanitary becomes in our combination, the CUMBERLAND Tub, and is so known and specified by the architects we are dealing with, and the plumbers who may be doing their work. This tub, equipped in various ways, with either Bell Supply or Top Nozzle Fixture and with special porcelain pieces and with very heavy brass work, takes a price much higher than your schedule price to the plumber, and if we should bill this separate and apart we would be revealing to the plumber a vital point in our business which is necessary, in its maintenance, and would occasion a great deal of controversy and adjustment by him. We are perfectly willing to maintain a separate file, showing exactly the net price that this tub was sold at, for your inspection, but we do believe that the privacy of our business should not be invaded to that extent by the plumber. This same condition would apply, we believe, to Meyer-Sniffen, Federal Huber Co., of New York, and The Peck Bros. & Co., of this city, and it presents a problem of difficulties, along with dangers, to our very existence. This same example, which we give of the bath tub, is true of lavatories, and we would like your views as to this condition, which is vital with us. Bear in mind please, that there is absolutely no danger of our cutting prices as the expense of the conduct of our business is greater than the ordinary jobbers, from the fact that we maintain an architectural force as well as a draughtsman, and a showroom, so that we could not afford to sell goods on a basis of only 10% profit, as we understand some of the jobbers do. We are not after an immense volume of business but are after a particularly fine trade such as residences, the owners of

which are willing to pay a higher price for specially high grade goods. 1

"In the second place, J. M. Kohler Sons Co. have established a showroom in our city, which is very attractive, and they also have friends amongst the architects, who specify their material. If our friends amongst the plumbers ask us for price on a certain architect's specification, which calls for Kohler's goods, according to Paragraph 10, under the subject of Rebates, this is prohibited except by permission from you for each specific case. This is going to lead, we fear, to an endless amount of correspondence. 2 Many times a price is asked immediately, and we would scarcely have time to get word to you, and get your permission, before the order would be placed.

"Third, in many cases where contracts were placed with us for plumbing fixtures, delivery not being required until late June, July or even first of August, we had placed the orders for these tubs with either The Standard Sanitary Mfg. Co. or the U. S. Sanitary Mfg. Co. for shipment at stated times. These orders were placed prior to our having had any knowledge of a Licensed Agreement, and the orders were acknowledged in the regular way. What is the status of these orders, with those two manufacturers, at the present time? If they ship them at the times which we designated they would, of course, be subject to the conditions prevailing at the time the order was placed, in our opinion, as our sales were made in accordance with the conditions at that time. We would also like an expression from you on this subject. 3

"You will pardon the length of this letter but we wanted to place our situation clearly to you, in these details, and ask for your your opinion as best how to handle them. Bear in mind that, at no time, would we ever be in danger of cutting prices or disturbing contracts. On the other hand, we would be one of your best selling agents to boost up the prices. 4

"We would appreciate a very frank reply.

"Very truly,

"EWH" "The Hotchkiss, Vail & Garrison Co."

1 Mr. GROSVENOR: I also offer this letter dated June 17th, 1910, as Petitioner's Exhibit No. 124.

Q. This letter reads:

"W-6171008-R
June 17, 1910.

"The Hotchkiss, Vail & Garrison Co.,
New York.

"Gentlemen:—

"Answering your esteemed favor of the 14th would state
2 that it is impossible for me to establish selling prices on goods not covered by the patents which I own. I have established selling prices on enameled iron ware, and although it may work some hardships on the jobber in separating the billing of the fixture from the ware, I cannot under the circumstances do anything different.

"There is no objection to your getting better prices if possible than those established in sheets, but the conditions in general that have been established will not in my estimation effect you as much as indicated in your letter. The margin of profit established on enameled ware is from all reports received, greater than the jobbers have been in the
3 habit of getting in the past few years. While I would like to accommodate you it is impossible to grant one jobber concessions that cannot be granted others, and I believe if you will follow the prices, and conditions outlined that your results on your total business will be better in the next year than they have in the past.

"As far as the Manufacturers who do not execute a license are concerned, would state that licensed manufacturers will give their jobbers every protection. I hope to be able to induce the Companies not licensed thus far to manufacture goods under the Patent of Processes."

4 What do you mean by the "Patent of Processes"?

A. That should read, "Patented Processes."

Q. Under what patented processes, then?

A. Enameled patented processes.

Mr. GROSVENOR: The letter continues as follows: "and I believe that I will succeed in the very near future. I hope to meet some of the New York jobbers sometime next week, and hope I will be able to

explain several points that on the face of them are not quite plain. 1

"With reference to the orders you may have unfilled on your books, would state that it is the desire of the Licensed Manufacturers to support their jobbers in every way possible, and if you will furnish me a copy of these orders I will arrange the matter to your satisfaction.

"I regret that I was not able to answer your letter sooner but an excess of mail at this particular time has prevented me giving the attention to each individual communication that it deserved. 2

"Thank you for writing me, and trusting I may have the pleasure of seeing you in the near future, I am,

"Yours very truly,

"E. L. Wayman."

Q. I show you a copy of a letter purporting to be written by you and ask you if you recall sending that letter out? A. Yes.

Mr. GROSVENOR: I offer this letter in evidence, it being dated May 11, 1910, and it is headed: "Edwin L. Wayman, Arrott Building, Pittsburgh," as Petitioner's Exhibit No. 125. 3

Letter referred to was then marked and filed as "Petitioner's Exhibit No. 125."

Q. That was sent to the different licensed manufacturers? A. Yes.

Q. On the date indicated? A. Yes.

Mr. GROSVENOR: I will read that letter. (Reading):

"May 11th, 1910.

"This is to remind you that if you are not equipped with Automatic Apparatus for enameling that are covered by the Patents in your License Agreement that you should take steps to install this equipment by June 1st. Will you kindly let me hear from you by return mail as to what you are now using and which patent you will operate under? 4

"Yours very truly."

1 By Mr. Grosvenor:

Q. Did you receive these two letters (indicating) in reply? A. Yes.

Mr. Grosvenor: I offer these two letters of May 13th and 16th as Petitioner's Exhibits Nos. 126 and 127 respectively.

Letters referred to were then marked and filed as "Petitioner's Exhibits Nos. 126 and 127," respectively.

Mr. Grosvenor: These letters read as follows:

2 "Union Sanitary Mfg. Co.
Noblesville, Ind.

May 13th, '10.

"To E. L. Wayman,
1509 Arrott Bldg.
Pittsburgh, Pa.

Subject

"Dear Sir:

"Your favor of the 11th, with reference to the
3 Automatic Apparatus for enameling covering the patents in our license, will state that we are equipped at the present time for this arrangement.

"Yours truly,

"EVB

"Union Sanitary Mfg. Co.,
E. V. Brigham,
Sec'y-Treas."

"W-5161006-I
May 16th, 1910.

4 "Mr. E. V. Brigham,
c/o Union Sanitary Mfg. Co.,
Noblesville, Ind.

"Dear Sir:

"Replying to your letter of the 13th with reference to Automatic Apparatus for enameling, you state that you are equipped at present for this Arrangement, but do not state whether you are using Electric

Power or Air. Kindly send me this information by return mail so that I can instruct the printer regarding the proper Labels to send you. 1

"Yours very truly,"

Q. I show you now a letter dated August 13, 1910, and addressed to the jobbing trade and signed by you. Do you recall sending that out? A. Yes.

Mr. GROSVENOR: I offer that as Petitioner's Exhibit No. 128.

Letter referred to was marked and filed as "Petitioner's Exhibit No. 128." 2

Mr. GROSVENOR: That reads as follows:

"August 13, 1910.

"To the Jobbing Trade:

"My attention has been called to the fact that certain Jobbers have allowed Plumbers to return to them the crates taken off of Enameled Ware, and have made them credit for these crates.

"This is a violation of your Contract, and would be considered as cutting the price, and must not be done. Where a fixture is returned as defective, or 3 for some other reason, you would, of course, allow the credit for the crate, the same as for the fixture. Where the crate is returned without the fixture, there must be positively no allowance made for same.

"Yours very truly,

"E. L. Wayman,
Licensor."

Q. This exhibit has reference to certain regulations stated in the price list?

A. That has reference to necessary packings.

Q. And it has reference to certain conditions stated in 4 the price list, which is Exhibit No. 41?

A. That is provided for in paragraph 9 of the jobbers' license agreement.

Q. And the specific charges are established by the price list? A. Yes.

Q. At what pages of Exhibit 41, the price list issued on June 1? A. Page 18 of the white sheets.

Q. You testified that you made efforts to induce the

1 Lipp Company of Cincinnati, Ohio, to enter into a licensing agreement with you? A. Yes.

Q. I show you a letter of July 2, 1910, addressed to Albert Weil, secretary and treasurer of the Louis Lipp Company, Cincinnati, Ohio, and ask you if you remember writing that letter to Mr. Veil? A. Yes.

Mr. GROSVENOR: I offer that as "Petitioner's Exhibit No. 129.

Letter referred to was then marked and filed as "Petitioner's Exhibit No. 129."

Mr. GROSVENOR: That letter reads as follows:

2

"W-721010-C
July 2, 1910.

"Albert Weil, Sec'y & Treas.
Louis Lipp Company,
Cincinnati, Ohio.

"Dear Sir:

"Attached find copy of letter that I have written the Cincinnati Jobbers, which I trust will meet with your approval.

3 "If it is possible for you and Mr. Lipp to come to Pittsburgh sometime next week I trust you will do so, and I have no doubt what we could get together.

"With kind regards and thanking you for the courtesies extended while in your city, I am

"Yours very truly,

"E. L. Wayman."

Q. I show you another sheet and ask you if that is a copy of the enclosure referred to? A. Yes.

Mr. GROSVENOR: I offer that as Petitioner's Exhibit

4 No. 130.

Letter referred to was then marked and filed as "Petitioner's Exhibit No. 130."

Mr. GROSVENOR: That reads as follows:

"W-721009-C
July 2, 1910.

"Gentlemen:

"Although the Louis Lipp Co., has not signed the

License Agreement, and are not operating under the Patent Processes, I understand that, until further notice they will quote on their goods the same prices that have been established on Licensed Ware. In the past it has been their custom in your city to ship Tubs uncrated. They have agreed to discontinue this practice and will in the future, furnish Tubs crated, and will charge for crating. 1

"Yours very truly,"

Q. I show you a letter dated June 21, 1910, and written by you to Mr. Weil. Do you recall writing that letter.

A. Yes. 2

Mr. GROSVENOR: I offer that as Petitioner's Exhibit No. 131.

Letter referred to was then marked and filed as "Petitioner's Exhibit No. 131."

Mr. GROSVENOR: I will read this:

"W-6211005-I
June 21st, 1910.

"Mr. Albert Weil,
c/o The Louis Lipp Co.,
Cincinnati, Ohio. 3

"Dear Sir:—

"In reply to your letter of the 20th, I will try and arrange to call on you in Cincinnati some time next year.

"I understand that Mr. Ahrens and Mr. Lipp are old friends and am writing Mr. Ahrens suggesting that he make arrangements to be in Cincinnati at the time when the proposition can be gone over by all of us.

"Yours very truly, 4
"E. L. Wayman."

Q. Did you subsequently have a meeting with Mr. Lipps?

A. Yes, not with Mr. Lipps but with Mr. Weil, the secretary.

Q. And was Mr. Ahrens present? A. Yes.

1 Q. And did you at that time suggest that they enter into a licensing agreement with you? A. Yes.

Examination Suspended.

At this point a recess was taken for one hour, the hearing to resume at two o'clock p. m.

After Recess.

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2 EDWIN L. WAYMAN, resumed the stand for continuation of direct examination and testified as follows.

DIRECT EXAMINATION BY Mr. GROSVENOR (continued):

Q. Mr. Wayman, I asked you to produce the reports of the licensed manufacturers showing the number of furnaces, &c. A. Here they are.

Q. This is from the time they entered into the licensing arrangement with you?

A. Yes, there is June, July and August there.

Q. You prepared this?

3 A. No, my assistant prepared it.

Q. You can state that it is correct?

A. It is approximately correct, yes.

Mr. GROSVENOR: I offer that in evidence, it consisting of three sheets, and being for the months of June, July and August, respectively, as Petitioner's Exhibit No. 132.

Papers referred to were then marked and filed as "Petitioner's Exhibit No. 132."

Q. I asked you also to produce a copy of the price list made up to date? A. This is it (indicating).

4 Q. Is that the one? A. Yes.

Q. The pages in the price list of June 1 which have been changed have been all withdrawn and other pages substituted, with the dates on which substituted?

A. Yes, such changes as made are noted therein as replacing June 1.

Q. Those that have dates subsequent to June 25 without the statement "Replacing Sheets of such and such a date" are new pages? A. Yes.

Mr. GROSVENOR: I offer that book in evidence as "Petitioner's Exhibit No. 133." 1

Price list book referred to was then marked and filed as "Petitioner's Exhibit No. 133."

Q. I direct your attention to page 1 of Schedule 1, being the five year baths, and I point to a list of names at the top of that page. Are those several names, Gem, Baltic, Appollo, Venice, Pilgrim, Priscilla—are those the names of particular baths manufactured by the manufacturers opposite whose names those words are placed? A. Yes.

Q. That is to say, the Gem is manufactured and sold by the Day-Ward Company, for instance? A. Yes. 2

Q. That page contains the names of 13 manufacturers manufacturing five-year guaranteed bath tubs?

A. Of that particular type.

Q. Of that particular type, yes, that is, five year guaranteed bathtubs and of those 13 names, 11 have license agreements with you, is that right? A. Yes.

Q. Then, all the five year bathtubs manufactured by those companies similar to the description contained on that page, are sold pursuant to the prices set out on that page in all the zones, is that right? For instance, take the Gem. The manufacturer is the Day-Ward Company and it wants 3 to sell some Gems to a jobber; then they get their price from that sheet? A. Yes.

Q. And the Humphryes Company, if it wishes to sell the Pilgrim bath, which is of the same type, they also look on this sheet? A. Yes.

Q. And the other manufacturers whose names appear on that sheet, they look to that sheet for their prices?

THE WITNESS: That is the licensed manufacturers?

Mr. GROSVENOR: Yes, the licensed manufacturers?

A. Yes.

Q. That sheet is typical of the way this price list is 4 made up?

A. Yes, in so far as trade names are given to the articles listed therein. For instance, some manufacturers don't give trade names to various articles they make.

Q. But if they sell something corresponding to the description given on any page of this price list, they follow the prices given on the page which gives the description of the article, is that right? A. Yes.

1 Q. In this price list, Exhibit No. 133, among the white pages, on page 15A and 15B and 15C you have set out certain examples of less than carload prices to plumbers in the various zones, is that right? A. Yes.

Q. Those are examples for the guidance of jobbers in making their sales to plumbers? A. Yes.

Q. That shows the prices they are to quote?

A. Yes, or how to arrive at a delivered price.

Q. At a delivered price governed by this price list, of course? A. Yes.

Q. I show you this example for Zone 6 which reads:
2 "Wanted delivered price at Cheyenne, Wyoming, of one five foot two year tub, Zone 6, price $29.75."

Mr. NOBLE: What is the number of that page?

Mr. GROSVENOR: That is on page 15B. Now, that price, $29.75, is the list price?

THE WITNESS: Yes.

Q. The discount stated is 36½ per cent.; that is the discount given for that zone? A. Yes.

Q. Then do you multiply 29.75 by 36½?

A. No, you multiply 29.75 by 63½—

3 Q. Well, you arrive at $18.89? A. Yes.

Q. And to that you add for crate 60 cents?

A. Yes, which makes $19.49.

Q. We are trying to arrive at the price which the jobbers shall quote in making this particular sale of a bathtub to a plumber? A. Yes.

Q. That is, in Zone No. 6; now, to calculate the freight to add to that you go to the nearest jobbing point? A. Yes.

Q. What is the nearest jobbing point here? A. Denver.

Q. In the State of? A. Colorado.

Q. And the shipment is to?

A. Cheyenne, Wyoming, from Denver, most probably.

4 Q. That is jobbers making sales to plumbers at Denver will cover Cheyenne, Wyoming, is that right? A. Yes.

Q. And that is a typical example of the application of the use of this price list by jobbers in making sales to plumbers, is that right? A. Yes.

Q. Then, in that last example we have given, add the freight from Denver, the nearest jobbing point to Cheyenne, and that makes the freight delivered at—

A. (Interrupting): Twenty-five cents.

Q. Now, look at the example which you have given in your book for Zone 7; that is another similar type, is it not? A. Yes. 1

Q. And that is "Wanted delivered price at Pocatello, Idaho, of one five foot two year tub;" the nearest jobbing point is where? A. Salt Lake City, Utah.

Q. I show you Petitioner's Exhibit 41, which is the price list as of June 1, and I direct your attention to Schedule 4½ on page 27, which is the 143rd page in the book. That page gives the prices on roll rim sink combinations, is that right? A. Yes.

Q. A roll rim sink combination is an article on which the drain boards are adjustable, is that right according to the forms set out on that particular page? A. Yes. 2

Q. The drain board, then, may either be wood or enameled iron ware? A. Yes.

Q. In some cases they are sold with enameled iron ware drain boards and in some cases with wooden drain boards?

A. Yes.

Q. Now, the prices given at the bottom of that page show what the jobbers shall sell the plumber at?

A. No, the prices explain what the manufacturers charge when the drain boards are enameled; you will note that it says, for wood drain boards you are to deduct so much. 3

Q. The price list, for instance, for A, at the top of the page, is stated as $33; is that right—that is at 250 pounds shipping weight? A. Yes.

Q. Does that include enameled iron drain boards or wooden drain boards?

A. That includes enameled drain boards, painted legs and brackets.

Q. If the jobber wants wood drain boards the deductions stated on that page are made, is that right? A. Yes.

Q. For each wooden drain board? A. Yes.

Q. There are provisions on that page also applying to charges for adjustable legs and the prices of enameled legs, is that right? A. Yes. 4

Q. Now, when the jobber has indicated a preference for wooden drain boards does the manufacturer send wooden drain boards?

A. That is if he furnishes them; some of them don't furnish them, I believe.

1 Q. Supposing a manufacturer does not furnish wooden drain boards, what would the price be?

A. The price of the enameled iron ware less whatever the charges for wood.

Q. Then it rests with him whether to send or not to send the wooden drain board?

A. Well, the jobber may not order the wooden drain board from the manufacturer.

Q. If he ordered the wooden drain boards, does he get them? A. Yes.

Q. If the jobber orders roll rim sink combinations with
2 wooden drain boards, what price must the manufacturer quote? A. I don't say that the price on—

Q. (Interrupting): I say if the jobber orders a roll rim sink combination with a wooden drain board, what price must the manufacturer quote?

A. The price given on page 27 for enameled drain board less the deduction made for the wooden drain board.

Q. The amount of which deduction is stated on that page? A. Yes.

Mr. GROSVENOR: Now I offer in evidence three patents. These are offered as follows, the Arrott
3 patent as "Petitioner's Exhibit No. 134;" the Ditheridge patent as "Petitioner's Exhibit No. 135," and the Lindsay patent as "Petitioner's Exhibit No. 136."

Papers referred to were then marked and filed as "Petitioner's Exhibits Nos. 134, 135 and 136" respectively.

Q. Will you look at the petition, Mr. Wayman, at the list of the names of corporation defendants on the first page, and state what officers of the Standard Sanitary Manufacturing Company you have seen respecting the assignment
4 of that Arrott patent to you?

A. I have seen Mr. Ahrens, Mr. Myler, Mr. Dawes, and F. J. Torrance, with respect to the assignments in so far as the entire proposition was concerned.

Q. That is, you spoke to them with regard to the Standard Sanitary Manufacturing Company entering into a license agreement with you? A. Yes.

Q. Take A. Weiskittel, Sons & Company, what officers did you see with reference to that?

A. John D. Weiskittel and Anton Weiskittel. 1

Q. Did you have any dealings with John D. Heise?

A. No.

Q. What position does he hold?

A. I don't know; he holds an office, but I don't know what it is. It is stated here (indicating) that he is secretary.

Q. The next is the Barnes Manufacturing Company; what officers or directors of that company did you see respecting the entering into of this licensing agreement by their company?

A. Mr. Barnes, the secretary and treasurer. 2

Q. Did you ever see Mr. Voegele?

A. No, I never met him.

Q. The next company is the Cahill Iron Works. Whom did you see of that firm?

A. F. H. Caldwell, the president, and Mr. J. J. Mahoney.

Q. And of the Colwell Lead Company?

A. Mr. J. T. Duryea.

Q. Take the Day-Ward Company, whom did you see in that company? A. Mr. A. G. Ward.

Q. Did you ever see Mr. Winfield? A. No. 3

Q. And the Humphryes Manufacturing Company?

A Mr. D. A. Carpenter.

Q. And the Kerner Manufacturing Company?

Q. Mr. J. A. Frauenheim.

Q. And of the J. L. Mott Iron Works, whom did you see?

A. Mr. Edward Hammann and a Mr. Bowman, I believe that is his name.

Q. You did not see Mr. Mott? A. No.

Q. Or correspond with him? A. No.

Q. Of McVay & Walker, whom did you see? 4

A. Mr. Alex Walker.

Q. Of the McCrum-Howell Company whom did you see?

A. Mr. Howard T. Gates, the secretary.

Q. And of the National Sanitary Manufacturing Company? A. Mr. F. G. Borden, president.

Q. Did you ever see Mr. Davis?

A. Not with respect to this proposition.

Q. Have you seen him with respect to the carrying out of the license contract? A. No.

1 Q. And of the Union Sanitary Manufacturing Company, whom did you see? A. C. E. Gates and E. V. Brigham.

Q. Did you see Mr. Huesmann? A. No, not at that time.

Q. It seems to me we introduced a letter from Mr. Huesmann, didn't we?

A. I don't think so, not previous to this license agreement.

Q. Any of these men that you have not seen have you corresponded with about carrying out the license agreement? A. No.

Q. Of the United States Sanitary Manufacturing Com-
2 pany whom did you see?

A. Mr. A. H. Cline, Jr., and Mr. C. F. Arrott.

Q. And of the Wolff Manufacturing Company?

A. John Clifford—

Q. How about Mr. Wolff? A. No.

Q. How about Mr. Hoelscher? A. Yes, Mr. Hoelscher.

Q. And for the Wheeling Enameled Ware Company, whom did you see or correspond with? A. J. E. Wright.

Q. And Mr. Franzheim?

A. I think I may have had one or two letters with Franzheim.

3 Q. About carrying out the agreement?

A. No, about one or two details concerning the agreement after it was entered into, or possibly before, I am not positive.

Q. At request of counsel you identified Exhibit 16 of the Government's petition as a letter which you wrote. I show you a copy of that letter. Is that correct (indicating)? A. Yes.

Mr. GROSVENOR: I introduce that in evidence as "Petitioner's Exhibit No. 137."

Letter referred to was marked and filed as "Petitioner's Exhibit No. 137."
4

Mr. GROSVENOR: I will read that letter:

"Edwin L. Wayman

"W-6181013-R

June 18, 1910.

"Chandler Pump Company,
Cedar Rapids, Iowa.

"Gentlemen:

"I am in receipt of your telegram of today stating

that you do not feel justified in signing at present. I trust you will see your way clear to execute this agreement within the next few days as it covers a matter which is entirely for the jobbers benefit. The Cedar Rapids Pump Company of your city, have executed the agreement, and I hope you will co-operate immediately with your local competitors, which will be much more advantageous than a continuous cut market. 1

"Will you not telegraph me upon receipt of this letter that you will execute the agreement in order that the matter may be adjusted in your city at once. 2

"Yours very truly,

"E. L. Wayman."

Q. Have they executed an agreement? A. No.

(NOTE: Counsel for the respective parties hereby stipulate and agree that the cross examination of the witness, Wayman, shall be made at a later date and inserted, together with the re-direct examination immediately after the testimony of the witness which has been given.)

Examination Suspended. 3

4

1 GEORGE H. BAILEY, a witness of competent age, produced on behalf of the Petitioner, being first duly sworn, testified as follows.

DIRECT EXAMINATION BY Mr. GROSVENOR:

Q. Mr. Bailey, you are the President of the Bailey-Farrell Manufacturing Company of Pittsburg? A. Yes, sir.

Q. They are jobbers of plumbing supplies? A. Yes, sir.

Q. Selling bathtubs and other sanitary enameled iron ware? A. Yes, sir.

Q. You appear here upon subpœna of the Government?

2 A. I do.

Q. You were subpœnaed to produce certain papers; have you them with you? A. Yes, sir.

Mr. GROSVENOR: Will you please produce them?

The witness then did as requested.

Q. First I want a copy of your No. 2309 order, dated June 1, 1910, to the Day-Ward Company, of Warren, Ohio?

A. I have it, but I think there is a discrepancy in the number there.

Q. You are subpœnaed for No. 2309? A. Yes, sir.

Q. And this is not that number? A. No.

3 Q. Is that your office copy of the order sent to the Day-Ward Company on that date? A. Yes, sir.

Mr. GROSVENOR: I offer that as "Petitioner's Exhibit No. 138."

Paper referred to was then marked and filed as "Petitioner's Exhibit No. 138."

Q. You are subpœnaed to produce the reply of the Day-Ward Company, which is dated June 6, 1910; have you that?

A. No, I haven't that. I gave that by request to Mr.

4 Darling.

Q. I show you a letter which is on the letterhead of the Day-Ward Company, Warren, Ohio, U. S. A., and dated June 6, 1910, and addressed to the Bailey-Farrell Manufacturing Company. Is that the letter of reply?

A. Yes, this is the letter.

Mr. GROSVENOR: I offer that in evidence without the stamp and without the words "Part of Exhibit No. 2."

Paper referred to was then marked and filed as "Petitioner's Exhibit No. 139." 1

Mr. GROSVENOR: I will read this exhibit (reading):

"June 6th, 1910.

"Bailey-Farrell Mfg. Co.,
Pittsburg, Pa.

"Gentlemen:—

"We acknowledge receipt of your order #2309 of June 1st. 2

"In regard to this order, would say that owing to the earnest solicitation of the Jobbers to establish a resale price, we, as well as the other Manufacturers, agreed not to take any business beyond June 1st, so that the resale price could be put into effect at that time.

"Under our agreement and terms with the Licensee, we are not permitted to fill this order at any other price than that mentioned in the Jobbers' Agreement which we mailed you Saturday. If this is satisfactory, kindly sign this Agreement and return to us, 3 and we will fill the order.

"Would advise that we are today writing a large number of our customers practically along the same line as this. Would also say that the success of the Resale Agreement, to a great extent, depends upon the hearty co-operation of the Jobbers. It will perhaps be a little hard the first thirty or sixty days in getting it started, but with your co-operation, as well as that of the other Jobbers, we think there is no reason why this will not go through.

"Yours truly,
"THE DAY-WARD CO., 4
Per A. G. Ward."

Q. Did you sign the Agreement to which he referred in that letter? A. I did not.

Q. Your subpœna calls for No. 2389, dated June 1, 1910, to the United States Sanitary Manufacturing Company of Pittsburg, Pennsylvania; have you that with you?

A. That is the one—I am unable to find that order—

that is as near as I can come to it, and I think that is the one referred to.

Mr. GROSVENOR: Well, that is No. 2399, so I will not offer it.

Q. Did you receive, about June 7, 1910, this letter from the United States Sanitary Manufacturing Company?

A. I did.

Q. Is this letter (indicating) which you hand me, is that the letter to which you refer? A. Yes, sir.

Mr. GROSVENOR: I offer that letter in evidence as "Petitioner's Exhibit No. 140," without the stamp or words "Part of Exhibit No. 2."

Letter referred to was then marked and filed as "Petitioner's Exhibit No. 140."

Mr. NOBLE: I object to the admission of this letter and also desire to have my objection noted to the previous letter, which is marked "Petitioner's Exhibit No. 139," as being incompetent, irrelevant and immaterial, and as in no way binding anybody except the particular writers of the letter, no conspiracy having been proved between the various Defendants.

Mr. GROSVENOR: You do not object on the ground that the letters have not been properly proven?

Mr. NOBLE: Oh, no.

Mr. GROSVENOR: I will read this letter, which is marked "Petitioner's Exhibit No. 140" (Reading):

"June 7, 1910.

"The Bailey-Farrell Mfg. Company,
Pittsburg, Pa.

"Gentlemen:—

"We received in this mornings mail your order #2389, but as we have not as yet received your signed license contract and our license agreement with Mr. Wayman makes it imperative that we receive this contract before entering any orders, we cannot enter this order until we receive same.

"Yours very truly,
"UNITED STATES SANITARY MFG. CO.,
"A. H. Cline, Jr.,
Secretary."

Q. Have you signed a license contract with the United States Sanitary Manufacturing Company? 1

A. No, sir; we have not.

Q. Have you signed any license contract?

A. We have not.

CROSS EXAMINATION BY Mr. NOBLE:

Q. Mr. Bailey, the goods which were referred to in these orders which counsel for the Government asked you about, you later obtained those goods, did you not—that is, these or similar goods?

Mr. GROSVENOR: I object. What do you mean by "similar"? Do you mean from another manufacturer? 2

Mr. NOBLE: From a licensed manufacturer.

Mr. GROSVENOR: I object, because the question should be, did he obtain them from the people to whom the order was addressed.

Q. Well, did you get these goods from the companies later to whom you wrote in respect to these particular orders?

A. I don't know. We may have gotten that one order from the United States, or its equivalent. I cannot say positively. I am under the impression that we did. The Day-Ward Company order we did not get, I think. 3

Q. But you got goods similar to the ones you ordered from the Day-Ward Company, from other licensed manufacturers, did you not?

A. I think not—not from licensed manufacturers. I don't know, that is a detail about which I cannot say exactly.

Q. So you don't want to be understood as saying that you did or did not get those goods? 4

A. I am not able to say definitely.

Q. You buy sanitary enameled iron ware goods continually, do you not? A. Yes.

Q. And you get the enameled ware goods manufactured by some of the licensed manufacturers, do you not?

Mr. GROSVENOR: State the date specifically.

THE WITNESS: Since when?

Mr. NOBLE: Since June 1, 1910.

A. On orders placed previously, yes, but otherwise not direct.

Q. You buy these goods from other jobbers since this time? A. Yes.

Q. And you have no difficulty in getting them?

A. Yes.

Q. You buy goods from other licensed manufacturers?

A. Yes.

Q. And have no difficulty getting them? A. No.

Q. And are able to buy sufficient to supply your needs? A. Yes.

Examination concluded, and signing of deposition waived by agreement of counsel for the respective parties.

JOHN A. KELLY, a witness of competent age, produced on behalf of the Petitioner, being first duly sworn, testified as follows.

DIRECT EXAMINATION BY MR. GROSVENOR:

Q. Mr. Kelly, what is your business?

A. Manufacturing sanitary enameled ware and iron sanitary enameled ware.

Q. What company are you connected with?

A. The Iron City Manufacturing Company of Pittsburg.

Q. Are you active Manager of that Company?

A. Yes, sir.

Q. Of the distributing end? A. Yes, sir.

Q. How long have you held that position?

A. Seven years.

Q. Where is the factory or the factories of the Iron City Manufacturing Company located?

A. Zelienople, Pennsylvania.

Q. Do you make up your goods there? A. Yes, sir.

Q. Are they goods of the type advertised in this pamphlet, I mean are they porcelain enameled goods?

A. Yes, sir; porcelain enameled iron goods.

Q. These licensed companies—that is the Standard Sanitary Manufacturing Company and the others whose names have been mentioned—they are competitors of the Iron City Manufacturing Company? A. Yes, sir.

Q. The products of the Iron City Manufacturing Company are sold throughout the United States? A. Yes, sir. 1

Q. In the Eastern States more than in the Western?

A. Yes, sir.

Q. But their sale is wide outside of the State of Pennsylvania, is that right? A. Yes, sir; very much so.

Q. In making your sales, you make shipments to jobbers in the various cities of the United States? A. Yes, sir.

Q. Or you make shipments direct to the customers through the jobbers? A. Yes, sir; on their orders.

Q. That is, on orders received by you from the jobbers?

A. Yes, sir; we do not sell the plumbers or the trade direct, but we ship direct to them on orders charged to the jobbers. 2

Q. You sell to jobbers and then the customers buy from the jobbers? A. Yes.

Q. And some orders are shipped to the customers on the orders from the jobbers? A. Yes.

Q. That is the general way in which manufacturers of sanitary enameled iron ware sell their products?

A. No, that is the way we do it. I cannot answer except for ourselves. The Standard Manufacturing Company have jobbing houses and from those jobbing houses they sell the plumbers direct, and Wolff sells the jobbers and plumbers, but we only sell the jobbers. 3

Q. Does this blue book, which I show you, Mr. Kelly, embrace the names of the principal jobbers in the United States?

A. I don't think there is a large jobber in the country but what is in that book.

Q. That is to say, all the important jobbers in the United States will be found listed in this book?

A. Yes, sir. I would like to correct that—that is jobbers in the plumbing supplies—we don't mean hardware and paint jobbers. 4

Q. But jobbers who handle your goods will be found generally in that book? A. Yes, sir.

Q. Have you or has your Company entered into any license arrangement or agreements with Mr. Wayman?

A. No, sir.

Q. Has Mr. Wayman suggested to you or asked you to enter into a license arrangement? A. Yes.

Q. When did he first suggest to you that subject?

1 A. I would say the latter part of September or the beginning of October, 1909.

Q. From that time until the middle of the year, 1910, did Mr. Wayman see you at various times and speak to you about this proposed arrangement?

A. Yes, sir; I have had talks with Mr. Wayman, probably—I can't tell, but two or three times a month from that time up until the latter part of March, with regard to it.

Q. When you saw him in September or October, 1909, did he ask whether if such a plan was drawn up you would
2 go into it?

A. Well, he was outlining such a plan the first serious conversation we had about it, and I think he stated it was done in the electric business and he got his idea from the electric business, with which he was formerly connected and just talked in a general way about it, about the patents they had and so forth.

Q. To see how you felt about it, is that right?

A. Yes, we just talked it over in a general way.

Q. Has Mr. Wayman, at various times, given you papers embodying certain provisions of licensing arrangement?

3 A. He might have given me one or two, but the principal number of them were mailed.

Q. Most of them were mailed? A. Yes, sir.

Q. In the period from September, 1909, until May, 1910,— That is May 10, 1910—did you receive from him at various times, either by mail or in person, various proposed contracts? A. Yes, sir; at different times.

Q. I show you what has been introduced in evidence as Petitioner's Exhibit No. 108, and ask you if he ever gave you a similar paper to that?

A. Yes, sir; we have had one of them.

4 Q. When did you receive one like that from him?

A. I would say the latter part of November, or the early part of December, I don't know.

Q. And was a paper similar to Petitioner's Exhibit No. 109, which is an agreement between E. L. Wayman and the corporation, whose name is not given, was that attached to the paper similar to Exhibit No. 108 at the time?

A. Yes, sir.

Q. Did he say anything to you about this?

A. Yes, we talked about that.

Q. Did he ask you whether you would go into it? 1

A. Well, not in those particular words, because the details were not worked out, it was along similar lines, and it was proposed that way and given to us to look over.

Q. You mean the details in this contract were not worked out? A. Yes, sir.

Q. Did you look over it? A. Yes.

Q. What did you tell him, did you encourage him?

A. We did not discourage him.

Q. Did you receive another form of contract from him?

A. Yes, we received a number of them.

Q. I show the exhibits of the Petitioner marked Nos. 8 2
and 10, No. 8 being the sample copy of the proposed form of the license agreement and No. 10 being the proposed form of the jobbers agreement, and ask you if you got those? A. Yes, we got one of these.

Q. Did you discuss the matter again with Mr. Wayman?

A. Yes, we got these sample copies, or ones similar to these.

Q. Well, did you tell Mr. Wayman anything respecting that last form? Did you tell him you would go into it or would not?

A. Oh, we told him we would not go into it, but I 3
could not quote the language.

Q. Were you present at a meeting of manufacturers in Chicago in February? A. No, sir.

Q. Were you present at any of the meetings of the Manufacturers of Sanitary Enameled Iron Ware?

A. Yes, sir.

Q. At which the license agreement was discussed?

A. Yes, sir.

Q. Which was the first meeting that you recall at which that subject was discussed?

A. I might answer that it was discussed in school and 4
out of school, when the meeting adjourned and before it was called. It was always discussed, not as a license agreement, but something to better business conditions.

Q. When was the first license agreement discussed?

A. Let's see, the first, in a general way,—I think it was in the early part of December—December 1, at Pittsburg.

Q. Who spoke to you about it?

A. It was not discussed, but Mr. Ahrens, President of the Standard Sanitary Manufacturing Company, made a

1 remark that he and Mr. Torrance had made a trip to different parts of the country and there was a demand from the jobbers for a resale agreement. It was not discussed, but it was a little information which he volunteered.

Mr. NOBLE: I move that the answer be stricken out as not being responsive to the question. The question was about the license agreement.

Q. Was there a meeting of the licensed sanitary ware manufacturers on February 1, 1910?

A. Not to my knowledge. I was not there in Chicago.

2 Q. Were you present at any meeting in February when the proposed license agreements were discussed.

A. Yes, at Pittsburg.

Q. When was that? A. February 1.

Q. Who was present?

A. Mr. Cline was there, of the United States Sanitary Manufacturing Company; Mr. Hoelscher, of the Wolff Manufacturing Company; Mr. Barnes, of the Barnes Manufacturing Company; Mr. Myler, of the Standard Sanitary Manufacturing Company; Mr. Kohler, of the J. M. Kohler Sons Company, and Mr. Gates, of the Union Sanitary

3 Manufacturing Company.

Q. What was said about the license agreement?

A. After the regular meeting was adjourned, the license agreement was brought up and—I don't know, but everybody wanted to speak at one time when it was started, and then they asked for expressions of opinion going around the room, whether we were in favor or unfavorable to it.

Q. Who expressed themselves as favorable to it?

A. I could not say right off.

Q. Was Mr. Torrance in favor of it?

A. I don't think he was there. I remember Mr. Myler

4 was there.

Q. Was he in favor of it?

A. The question was brought up how we could do it unless the manufacturers had a price agreement among themselves, and that brought up a discussion.

Q. And some of the manufacturers were opposed to a price agreement?

A. Yes, Mr. Myler said that the Standard Manufacturing Company was.

Q. Then what was said?

A. Well, it went all around the room. I cannot quote at this day everybody's answer. It was just a discussion in general. 1

Q. Did the majority of those present express themselves as in favor of a license agreement? A. I would say yes.

Q. Did you express yourself? A. Yes.

Q. What did you say?

A. I said I did not think they could get up a resale price list without an agreement from the manufacturers and then I sat down.

Q. Did you want a price agreement?

A. Well, it has not been put yet in a right shape to meet with my approval. 2

Q. Why not? A. For business reasons.

Q. Was anything said at that meeting about the Arrott Patent?

A. I don't recall the name brought up, but I do remember the patent being mentioned.

Q. Did any manufacturer state that he was desirous of securing the Arrott patent?

A. No, not unless it was under the resale agreement alone. It was talk just about patents, not any particular patents, not a dredger or anything like that. 3

Q. When was the next meeting you attended?

A. The next meeting I attended was on March 29.

Q. Where was that meeting?

A. At the Hotel Astor, New York.

Q. Who were present there?

A. Mr. Barnes was there, of the Barnes Manufacturing Company; Mr. Caldwell, of the Cahill Iron Works; Mr. Laing of the Humphryes Manufacturing Company; Mr. Hammann, of the J. L. Mott Iron Works; Mr. Walker, of McVay & Walker; Mr. Gates, of the McCrum-Howell; Mr. Borden, of the National Sanitary Manufacturing Company; and Mr. Gates of the Union Sanitary Manufacturing Company; Mr. Cline and Mr. Arrott of the United States Sanitary Manufacturing Company; Mr. Hoelscher of the Wolff Manufacturing Company and myself and Mr. Torrance and Mr. Wayman. 4

Q. When did you meet, in the morning?

A. Yes, I think it was some time about eleven o'clock.

Q. In the morning?

A. Yes, sir; we were a long time getting together.

Q. Was anything said about a license agreement there?

A. Yes, sir.

Q. What was said?

A. Well, they asked an expression of opinion from everyone present.

Q. Who asked when you say "they"?

A. Why, Mr. Torrance was in the chair at the time and he asked an expression of opinion from everyone present, as to how they stood about it.

Q. And did they go around to everyone in the room?

A. Yes, sir.

Q. And did everyone say whether or not he was in favor? A. They gave their answers.

Q. Did Mr. Torrance state whether or not he was in favor of it? A. Yes.

Q. Was he or not? A. He was.

Q. Were any reasons urged against the adoption of the plan? A. Well, one man questioned the legality of it.

Q. Who was that?

A. Mr. Caldwell of the Cahill Iron Works. I raised a legal question about it. They asked me personally about it and I told them I was on the fence and I did not know which side to come down on, but I was open to conviction.

Q. Conviction that it was legal?

A. That it was legal and good business policy to grant it.

Q. Who answered as to the legal questions? Was there or not any question as to the legality of it?

A. Why, yes; we had an address by Mr. Jackson.

Q. What did he say?

A. That is a hard proposition what he said. He talked at length.

Q. Did he mention the patent?

THE WITNESS: Which patent?

Q. Did he mention any patent?

A. No, he was reading off some decision, the Rubber Tire Cases and some others, and I was talking to some persons around there and he addressed the meeting at length with regard to patents in general.

Q. Did he go away then? A. Yes, he left.

Q. Then was the discussion renewed? A. I left.

Q. Were you there at the afternoon session?

A. This was early in the afternoon. 1

Q. And did Mr. Torrance preside in the afternoon when you were there? A. Yes.

Q. Were you there at the meeting the next day? A. No.

Q. When was the next time at which Mr. Wayman spoke to you about the license agreement?

A. After March 29— I would say about three weeks afterwards.

Q. Did you see him in Pittsburgh? A. Yes, sir.

Q. Did he come to see you?

A. No, I think we met at the restaurant there. I don't know whether he called up or whether I called up. 2

Q. Did he urge you to enter? A. Yes.

Q. What did you tell him? A. No.

Q. Did any one else refuse to enter about this time?

A. No, I didn't see anyone else at that time.

Q. And did anyone else ask you to enter the licensing arrangement during May? A. No.

Q. Or July?

A. I cannot recall about July. It was in June—

Q. Was it in August?

A. No, no person else, it was only Mr. Wayman in August again. 3

Q. Who, if any one, suggested to you that you should enter into the licensing arrangement? A. Mr. Torrance.

Q. Where? A. At Toledo.

Q. When? A. About the middle of June.

Q. Of this year? A. Yes, sir; and Mr. Cline.

Q. Where? A. The same place.

Q. The same time? A. Yes, the same time.

Q. Anyone else?

A. That is, within a couple of hours—the same afternoon; also Mr. Gates of McCrum-Howell.

Q. Where? 4

A. The same place and same time, that is about all I can remember in June.

Q. Did Mr. Torrance at any other time suggest that you should enter into the arrangement?

A. Yes, in Philadelphia.

Q. When was that? A. June 29.

Q. Was anybody with him at the time?

A. Mr. Wayman.

Q. What did he say?

1 A. Well, we had a general talk there. It was quite lengthy and we went over the whole thing and re-hashed it.

Q. Did you talk about anything else except this licensing agreement?

A. That was the principal object of our being there, of course.

Q. How did you happen to be there?

A. I was asked to come over.

Q. Who asked you? A. Mr. Wayman.

Q. He asked you to come over to see whom?

A. To have a conference. He didn't say to come over
2 to see anyone, but to have a conference.

Q. Did he ask you to come over to see anyone?

A. Yes, Mr. Boardman, of Ronalds & Johnson Company, Brooklyn.

Q. Are they jobbers? A. Yes, sir.

Q. Who else?

A. Mr. John Fleck, of Fleck Brothers & Company, Philadelphia.

Q. Are they jobbers?

A. Yes, sir; and Mr. Thorndyke, of the F. W. Webb Manufacturing Company, of Boston.

Q. Did all these people meet together there?
3 A. Yes, sir.

Q. And these men whom you have named, did they discuss with you this subject?

A. Well, I discussed it with them before, that is with the jobbers, on previous trips.

Q. Have you seen Mr. Torrance at any other time since May, 1910, in respect to the matter?

A. Let's see—that was June, July—no, not to discuss the license agreement.

Q. Was anything said at this March meeting about the per cent. of business?

4

THE WITNESS: How do you mean?

Mr. GROSVENOR: The per cent. of the enameled iron ware business which would go into the licensing arrangement.

Mr. NOBLE: I object to the question as leading.

Mr. GROSVENOR: Put it this way: Was there or not anything said at the March meeting about the percentage of manufacturers and of the business which

should go into the licensing agreemeit which would make it a success? 1

A. Mr. Jackson made a remark that they ought to have about 85 per cent.

Q. Did he say why?

A. It would look better, or language equivalent.

Q. This licensing arrangement or agreement went into effect June 1, or about that time? A. June 6.

Mr. NOBLE: How does this witness know that when he is not a party to it?

Q. Did some of the jobbers who had bought goods of you prior to June 6, decline to buy thereafter? 2

Mr. NOBLE: Objected to as incompetent, irrelevant and immaterial. They might have declined to buy for some reasons which have nothing to do with this matter at all.

A. Yes, sir.

Q. Did they assign any reason? A. Yes, sir.

Q. What was the reason?

A. Because we did not sign the license agreement.

Q. Do you know whether Ronalds & Johnson have signed this license agreement? A. As far as I know they have not. 3

Q. At this meeting in Philadelphia, you say Mr. Boardman represented Ronalds & Johnson? A. Yes, sir.

Q. And Webb & Company—are they jobbers?

A. Yes, sir.

Q. And Mr. Thorndyke represented them? A. Yes, sir.

Q. Did he sign the license agreement?

A. Not to my knowledge.

Q. Were there any others there? A. Mr. Fleck.

Q. Did he sign? A. No, sir.

Q. And you did not sign? A. No, sir. 4

Q. Did Mr. Torrance urge these jobbers to sign this license agreement?

Mr. NOBLE objected to the question as incompetent, irrelevant and immaterial.

Q. Well state whether Mr. Torrance said anything or not to any of these jobbers about entering into this license agreement?

A. Well, there were two rooms there; I was in one room and the two others were in the other. Mr. Torrance and Mr. Wayman talked to the jobbers and when they got through I went in and talked to them. In other words, they tried to win them over to their side and I tried to keep them on my side. What was said by them, of course, I don't know.

Mr. NOBLE: I move to strike out the answer. The witness says he don't know what was said.

Q. These three jobbers are still customers of yours?

A. Yes, sir.

Q. You then kept them? A. Yes, sir.

CROSS EXAMINATION BY Mr. NOBLE:

Q. Does your Company manufacture a full line of sanitary enameled iron ware?

A. I don't know how to answer that. We don't manufacture everything that is made.

Q. Substantially a full line? A. Fairly complete line.

Q. A fairly complete line? A. Yes, sir.

Q. How many furnaces have you in your plant?

A. About twelve active.

Q. How many are not active?

A. None. They are all running—that is, they are all in good condition.

Q. You sell, as I understood you to say, to jobbers and not plumbers? A. Yes, sir.

Q. Mr. Grosvenor shows you what he calls the blue book; are you familiar with that book? A. More or less.

Q. I understood you to say substantially all the names of the large jobbers in the United States were in that book?

A. I don't know of a jobber that is not in it.

Q. Do you know jobbers whose names do not appear in the Blue Book?

THE WITNESS: Outside of the Blue Book?

Mr. NOBLE: Yes.

A. I don't suppose we have any on our lists whose names do not appear in there.

Q. Yours is an active factory, is it not, Mr. Kelly?

A. Yes.

Q. You do your share of the business?

A. I think we do. 1

Q. You are active in pushing it? A. Yes.

Q. Is your business local, that is around your factory, or does it extend generally throughout the country?

A. Principally East, but we do it from ocean to ocean.

Q. In practically all the States of the Union?

A. No, sir.

Q. Well, in all the sections of the country?

THE WITNESS: I don't know what you mean by sections.

Mr. NOBLE: Well, the different parts. Do you do business in the East? 2

A. Yes.

Q. The West? A. Yes.

Q. And in the North and South?

A. Yes, but not much in the South.

Q. That is of your own choosing, that you do not do business there? A. Well, choice and necessity.

Q. You mean that you have not extended your business into the South? A. Yes.

Q. Have you made any efforts to do so?

A. Not any particular efforts. 3

Q. Are you doing so now?

A. No, sir; and we have not in the past.

Q. Do you have any difficulty in selling your wares outside of the ordinary commercial difficulties which we usually have? A. At present, no.

Q. You make high grade materials, don't you?

A. Yes, sir.

Q. Do you use what is known as the hand process?

A. In part, yes.

Q. Do you use an automatic process? A. Yes.

Mr. GROSVENOR: This is new ground which you are covering. 4

Mr. NOBLE: Counsel for defendant replies that counsel for Government interrogated about the manufacture of sanitary enameled iron ware and I am just following that up.

Q. Do you use the automatic process quite generally in your factory?

A. I would say about half and half, or 60 per cent. is

1 done by hand, and 40 per cent automatic; I don't know exactly.

Q. Now, I understood you to say that Mr. Wayman first suggested this idea to you about a license under patents some time in September or October of 1909? Is that correct? A. Yes, sir.

Q. Had you prior to that ever heard of any licensing scheme under patent? A. No, sir.

Q. The first time a person ever discussed such a thing with you, then, was Mr. Wayman? A. Yes, sir.

Q. And that was along in September or October, 1909?

2 A. Yes, sir.

Q. Along about the end of the year, 1909, or early in January, 1910, do you remember Mr. Wayman saying to you, or handing to you, a paper to the effect that he had made an arrangement with the Standard Sanitary Manufacturing Company to get the Arrott patent, and outlining a scheme for licensing manufacturers under that?

Mr. GROSVENOR: That is a pretty broad question, is it not?

A. I think about the latter part of December he mentioned something about being able to get hold of the Arrott

3 patent and that Wolff would throw in a lot of patents. In other words, we spoke of patents in general.

Q. He said he could get the Standard patents?

A. Yes.

Q. And one from Wolff? A. No, several from Wolff.

Q. And did he say he could get any from anybody else?

A. He talked of getting one of ours.

Q. What is the name of that patient?

A. The Nesbit patent.

Q. That is the automatic patent which you use in your factory? A. Yes, sir.

4 Q. You said at times when you met Mr. Wayman, from October down to May, he discussed the idea which he first presented to your mind in October or September; is that correct?

THE WITNESS: What idea?

Mr. NOBLE: The licensing of you and other sanitary enameled iron ware manufacturers under patents?

A. Yes, he talked along those lines.

Q. I understood you to say that at times when the manufacturers were together before and after meetings Mr. Wayman also discussed that with you and with the other manufacturers; is that correct? 1

A. No, sir; he did not discuss it with me, because we talked about it here in the city off and on; our offices are only about four squares from each other.

Q. This idea of licensing the manufacturers of sanitary enameled iron ware was his idea? A. Yes, sir.

Q. He was the first person who ever talked to you about it? A. Yes, sir.

Q. And as far as you know, he was the first person who talked to the other manufacturers about it? 2

A. Yes, as far as I know.

Q. And you never talked to the other manufacturers about it until Mr. Wayman had talked to you about it?

A. No.

Q. And they never talked to you about it before that time?

A. No; everybody seemed to be familiar with it and every where we met somebody started to talk about it.

Q. In other words, somebody had talked to those other manufacturers and given them the idea of the scheme the same as Mr. Wayman had given it to you? A. Yes. 3

Q. And they all understood what the plan meant?

A. Yes, they all understood what the plan meant. That is, they seemed to.

Q. Let me see what Mr. Wayman said about the scheme having been in vogue in the electrical business in which he had formerly been engaged; what did he say about that?

A. Well, if I recollect, right, he said that he got his ideas from the electric business in which he was formerly engaged, and he had a copy of an agreement of theirs with patents on it or some kind of a contract which they had to make. I did not read it over. I just looked at it and handed it back and he gave me the idea that he got his idea from the electrical business and they were going along those lines. 4

Q. And he suggested to you that this would be a good thing for the manufacturers of sanitary enameled iron ware to do, is that it? A. Yes.

Q. Did you read any of the papers that Mr. Wayman handed to you from time to time containing outlines of

this scheme? I understood you to say to counsel for the Government that you did receive such papers?

A. Yes, sir; and I gave them to those people.

Q. To counsel for the government? A. Yes.

Mr. GROSVENOR: At our request, after subpœna was served.

Q. You say after the meeting here in Pittsburgh, you say there was some discussion about the license agreement, that is after February 1st? A. Yes.

Q. Do you remember Mr. Wayman saying anything on that occasion? A. I don't recall distinctly.

Q. Do you remember that Mr. Wayman was there?

A. Yes, sir.

Q. Do you remember when the meeting was over and before you went away he got up and said that he wanted to say something about the plans which he had talked about to you and the other manufacturers individually?

A. I do not recall exactly.

Q. Well, who did the talking?

A. Everybody was talking.

Q. Do you recall that Mr. Wayman opened the discussion? A. I don't recall who opened it.

Q. Didn't you say that Mr. Myler said that the Standard Sanitary Manufacturing Company was opposed to a price agreement? A. Yes.

Q. He did not state that they were opposed to a licensing agreement?

A. I do not recall whether that question was put to him in that way or not.

Q. In other words, the distinction you are making is a price agreement without reference to patents on the one hand, and the license agreement with patents on the other; is that what you mean?

A. They were talking about a resale, about the manufacturers getting together, and I raised the question that I did not think they could get a resale without a price agreement to start with among themselves, and Mr. Myler said that the Standard Sanitary Manufacturing Company was opposed to a price agreement and that ended the conversation between us.

Q. In other words, Mr. Myler said to you that the

Standard Sanitary Manufacturing Company was opposed to a price agreement among the manufacturers? 1

A. Yes, sir.

Q. Have you been a member of the Sanitary Enameled Ware Associations for the last several years?

A. No, only the last.

Q. What was the name of that?

A. I don't know, but E. L. Wayman was the Commissioner.

Q. You mean the one which disbanded on June 1st, of this year? A. Yes.

Q. Were you present at the meeting when Mr. Wayman was elected? A. Yes, sir. 2

Q. Do you remember how that came about?

A. Yes, sir.

Q. Will you please state?

A. Mr. Cline read an application from him.

Q. Mr. Cline?

A. Yes; it was addressed to Mr. Cline and he said that he had heard of the Association and made an application for the position of Commissioner or the Secretary, whatever you term it.

Q. How was he elected? 3

A. His name was proposed and another gentleman, and he was elected by ballot.

Q. There were two candidates, and then Mr. Wayman was elected? A. Yes, sir; Mr. Wayman was elected.

Q. Were there some votes for the one man and some for the other? A. Yes, sir; it was not unanimous.

Q. Now, Mr. Kelly, Mr. Grosvenor asked you when was the next meeting after the February 1st meeting, and you said the March 29th meeting in New York, as I understood you? A. Yes, sir.

Q. That meeting was called by whom? A. Mr. Wayman.

Q. And the people there were the manufacturers of the sanitary enameled iron ware? A. Yes, sir. 4

Q. Was that a meeting called by him specially, at his request?

THE WITNESS: At whose request?

MR. NOBLE: Mr. Wayman's.

A. Mr. Wayman called all the meetings.

Q. Did you go to that meeting pursuant to Mr. Wayman's request that you come? A. Yes.

1 Q. Had he talked to you before hand? A. Yes.

Q. Did he tell you what he was going to bring up?

A. Yes, sir.

Q. What did he say it was?

A. He told me to come over and he would try to convince me by Mr. Jackson's talk that we were wrong about the legal part of it.

Q. Did you go? A. Yes, sir.

Q. Were you there when the meeting came to order?

A. Yes, sir.

Q. Do you remember who first got up and talked?

2 A. I think it was Mr. Wayman.

Q. Did Mr. Wayman say to the manufacturers anything about the exhibits Nos. 8 and 10 which were the proposed jobbers' agreements which Mr. Grosvenor showed to you and which I now show to you? A. I don't recall.

Q. Mr. Wayman had given or sent to you before the meeting these exhibits? A. Yes, sir.

Q. And when he first got up and talked, did he talk about these licenses? A. I don't recall.

Q. You do not remember what he said?

A. I don't remember him talking about that. He talked
3 about everybody knowing what they were over there for and so forth and then Mr. Torrance took the chair.

Q. You were over there to express an opinion, were you not?

A. Yes, sir; to talk it over, listen to Mr. Jackson and bring along any unfilled orders.

Q. Then, the meeting was called for considering and expressing your opinions on Mr. Wayman's proposed license plan, is that correct? A. Yes, sir.

Q. After Mr. Wayman's talk, you say Mr. Torrance was elected chairman; do you remember how that happened —was it by ballot?

4 A. I don't remember a ballot being taken.

Q. You do not remember how he was elected Chairman; was it by *viva voce* vote?

A. I think he just took the chair because he was Vice-President of the Executive Committee and because the President was not there and the Chairman of the Board was not there, and he just took the chair, as he was entitled to.

Q. You do not remember whether he was elected or not for that occasion? A. I don't think he was. 1

Q. And you are not testifying so much from memory as from the way it should go as you understand it?

A. That is the way I think it should go; I don't remember a ballot.

Q. You say Mr. Jackson talked to the meeting?

A. Yes, sir.

Q. What did he say?

A. He was reading off some decision in some of the Circuit Court cases about some other lines of business conducted under patents; and I remember him using the words, "Now, mind, I am not up on the technical part of your business. Is it necessary to use this dredger to produce or make enameled ware economically, successfully and a good article?" To that question four or five answered yes. He said, "If such is the case, I tell you, gentlemen, you can go ahead and do this legally." I cannot quote all which he said. There was another remark about what effect it would have on the people who stayed outside, and he said that they ought to be inside and that they should get at least 85 per cent., that it would look better if they had 85 per cent. of the production in. 2 3

Q. That it would be better from a commercial end?

A. No, I thought he meant from the legal end. He said it was not necessary but that it would be a good thing to have 85 per cent.

Q. Now, after that morning or afternoon session, I understand you went away? A. Yes, sir.

Q. Since that time down during the months of May, June, July and August, I think Mr. Wayman asked you from time to time to take a license under his patents, is that correct? A. Yes, sir.

Q. And you said that the matter had not been put in a right shape for you to do so? 4

A. Well, we have not signed it yet.

Q. You said that you had not signed it for business reasons? A. Yes; and legal reasons too.

Q. Now, have you asked the jobbers with whom you do business whether or not it would be agreeable to them if you did take a license, whether they would like the jobbers' licensing plan, previous to the meeting in Philadelphia which you told Mr. Grosvenor about?

1 THE WITNESS: What is that question again, please?
The stenographer then read the cross question.

A. Some of them were not favorable to it.

Q. And the others?

A. There were some that were favorable.

Q. Those were the business reasons why you did not go into this thing, is not that so? A. No.

Q. Now, you said that Mr. Torrance talked to you in Toledo and Mr. Cline and others; I understood you to say that they met you at different times of the day and that you would talk about it, is that correct?

2 A. There was a meeting of another association there and these gentlemen were present and Mr. Wayman and I got talking and we came up to my room to talk, and while in conversation there the other gentlemen dropped in and more or less during the day I ran up against others in our line of business.

Q. In other words, these were just casual talks as you happened to meet? A. Yes, sir.

Q. This was a meeting of jobbers of sanitary enameled iron ware in Toledo, wasn't it?

A. Jobbers of plumbing supplies; we did not go over
3 there to confer especially on this license agreement.

Q. That was a meeting of jobbers in plumbing supplies?

A. Yes, sir; plumbing supplies generally.

Q. And had nothing to do with this license agreement?

A. No.

Q. Were you present at the meeting of those jobbers when the Attorney General of Ohio talked about the legality of licenses under patents?

A. He talked at a meeting, but I did not hear it. I was in my room at the time.

4 MR. GROSVENOR: I think you have that confused with a meeting of the Central Supply Association, which was about a different matter.

MR. NOBLE: No, there were two occasions.

MR. GROSVENOR: I object anyway, as it is irrelevant and incompetent.

Q. You were asked by Mr. Wayman to go over to Philadelphia for a meeting, were you not?

A. Yes, sir; and by Mr. Torrance.

Q. Did Mr. Fleck call you up over the telephone and ask you to go? A. No, sir; not that I remember. 1

Q. At one of the talks you had with Mr. Wayman, did you tell him that you had about concluded to take a license agreement from him and the matter would later be decided at Directors' meeting to be had?

THE WITNESS: What was that?

The stenograher then read the cross question.

THE WITNESS: Which meeting have you reference to?

Mr. NOBLE: Any meeting.

A. Yes, sir; I said that we would take a license agreement on certain conditions, provided they could satisfy our Directors that it was legal, but not the present license agreement as constituted, that we would sign. 2

Q. Do you remember when that was?

A. It was about the 29th or 30th of June, in Philadelphia.

Q. Do your goods sell generally, type for type, at about the same prices as the licensed manufacturers' goods?

THE WITNESS: Now or a year ago or two years ago? 3

Mr. NOBLE: Oh, generally.

Mr. GROSVENOR: I think that question should be made more specific.

Mr. NOBLE: Now, then: At this time?

Mr. GROSVENOR: Prices to the jobber, plumber, or customer?

Mr. NOBLE: He says that he sells to the jobbers only?

THE WITNESS: What do you mean—what we are selling to the jobbers at?

Mr. NOBLE: Yes. 4

A. No, we are selling to jobbers at a cheaper price than the licensed manufacturers are.

Q. Much less A. Yes.

Q. Can you state the percentage less?

Mr. GROSVENOR: I object to that question.

A. I cannot do that very well.

RE-DIRECT EXAMINATION BY Mr. GROSVENOR:

Q. Mr. Noble asked you whether you were having

any difficulty now marketing your products, that is to the jobbers; when that licensing agreement went into effect in June, did you for a time have any difficulty?

A. Well, we were kept busy going around the country trying to make arrangements to market our output for the balance of this year.

Q. Mr. Noble has asked you as to the reasons on account of which you did not go into the license agreement; what was the principal reason?

A. The first thing, we want to run our own business and not turn it over to anybody else, and the second was the legal end of it.

Q. What was the legal end of it?

A. Whether there would not be something happen like is happening today.

Examination concluded and signing of deposition waived by agreement of counsel for the respective parties.

The taking of testimony was then adjourned to the fourth day of November, 1910, at the Post Office Building in Chicago, Illinois, at 10.30 o'clock a. m.

Post Office Building,
Chicago, Illinois, November 4, 1910.

Pursuant to adjournment, the evidence for the Petitioner was resumed as follows, with same counsel present.

WALTER J. KOHLER, a witness of competent age, produced on behalf of the Petitioner, being first duly sworn, testified as follows.

DIRECT EXAMINATION BY Mr. GROSVENOR:

Q. What is your business?

A. I am a manufacturer of porcelain sanitary enameled iron ware.

Q. What is your connection with the J. M. Kohler Sons Company? A. I am president and treasurer.

Q. Where is the factory or the factories of that company?

A. Sheboygan, Wisconsin.

Q. Where have they offices? 1

A. In New York City, Chicago and San Francisco.

Q. And Sheboygan, of course?

A. Sheboygan is the general office.

Q. Has your company executed any license agreement with E. L. Wayman? A. It has not.

Q. Will you state, Mr. Kohler, the principal articles of sanitary enameled iron ware which your company manufactures?

A. Bathtubs, lavatories, laundry tubs and sinks.

Q. Kitchen sinks, do you mean?

A. Of all kinds; closets, urinals—we manufacture a 2
complete line of porcelain sanitary enameled iron ware.

Q. In the trade, what is the most important of the articles you have mentioned?

A. Baths, lavatories and sinks.

Q. Kitchen sinks? A. Yes.

Q. And in the term "kitchen sinks" you include the other kinds of sinks? A. Several kinds and varieties.

Q. "Lavatory" is the trade name for a wash-bowl?

A. Yes, wash basin.

Q. Such as are fixed to the wall?

A. Some, and some are on stands. 3

Q. In making these sales of the various articles, do you ship your products throughout the United States?

A. We do.

Q. To other states than Wisconsin? A. Yes, sir.

Q. Do you enter into contracts with jobbers situated in other states for the shipment of such goods?

A. Well, not specifically contracts. We sell them. I don't quite understand that question.

Q. You sell them, that is all I want. A. Yes.

Q. And you ship to them? A. Yes.

Q. Have you a copy of the Petition? A. I have not. 4

Q. I hand you a copy and ask you to look at the names of the manufacturers of Sanitary Enameled Iron Ware stated on pages 1 and 2 of the Petition. Other than the names there given, what manufacturers are there of sanitary enameled iron ware in the United States?

A. There is the J. M. Kohler Sons Company of Sheboygan, Wisconsin; the Iron City Sanitary Manufacturing Company of Pittsburgh; the Blairsville Company— I may

1 not have the full titles of these companies— I believe that is called the Blairsville Enameled Ware Company of Blairsville; the Washington Iron Works of Los Angeles; then there is a small company by the name of Rundel Manufacturing Company, at Milwaukee.

Q. What lines do they manufacture?

A. They manufacture some of the articles, bathtubs, lavatories and sinks.

Q. Is that an important concern?

A. They do not, as a rule, market their product directly through the plumbing trade. It has been understood
2 that they dealt largely through Sears, Roebuck & Company, the mail order house; then there is another one which I cannot remember now.

Q. Do you know if there is one in Cincinnati?

A. The Louis Lipp Company, yes.

Q. Is that a small concern?

A. As far as the sanitary enameled ware is concerned.

Q. Do you know of the Clymer Manufacturing Company? A. Yes.

Q. Other than the names stated and those in the list to which I have directed your attention, do you know of
3 any other manufacturers of sanitary enameled iron ware in the United States? A. I do not.

Q. How long have you been in this business?

A. About twenty years.

Q. You keep advised of the conditions existing and of the manufacturers in the same lines? A. I think I do.

Q. Mr. Kohler, when did you first hear anything about a license agreement in the sanitary enameled ware trade?

A. In October, 1908.

Q. Where was that? A. At the Auditorium Hotel.

Q. In Chicago? A. Yes, sir.

4 Q. Was it a meeting?

A. It was an informal meeting of manufacturers.

Q. Of what?

A. Of enameled ware—of enameled sanitary ware.

Q. That is, there were present representatives in general from these companies named on these two pages of the Petition?

Mr. NOBLE: I object. Let the witness state who was present.

Q. Who was present? A. Mr. Clifford was present. 1

Q. Of what company?

A. The L. Wolff Company; Mr. Cline was present, of the United States Sanitary Manufacturing Company.

Q. Will you state where they are from?

A. The United States Sanitary Manufacturing Company is of Pittsburgh; Mr. Clifford of Chicago and Mr. Torrance of the Standard Sanitary Manufacturing Company were present. There were others present, but I do not remember them.

Q. Who made any suggestion respecting a license agreement? 2

A. Mr. Torrance spoke of an arrangement. It was not specifically mentioned as a license agreement.

Q. How did he describe it?

A. As an arrangement for controlling the prices through the use of the Arrott patents on a pneumatic dredger.

Q. This was when? A. In October, 1908.

Q. When was the next time that you heard a reference in the trade to a license agreement?

Mr. NOBLE: I object to the question as immaterial and as having nothing to do with the issues in this suit or the parties involved in it. 3

Mr. GROSVENOR: I will change that: Were you present at any meetings after October, 1908, at which a license agreement was discussed?

Mr. NOBLE: Note an objection to the question, as the witness has not stated that he was present at any meeting in October, 1908.

Mr. GROSVENOR: Read the question, please.

The stenographer then read the last question.

Mr. GROSVENOR: Please answer that question.

A. Yes.

Q. When? A. There was a discussion— 4

Q. State when the meeting was?

A. There was a meeting in the early part of February, I think the first, at Pittsburgh.

Q. February of what year? A. 1910.

Q. A meeting of whom? A. Manufacturers.

Q. When you use the word "manufacturers"—

A. (Interrupting): I mean manufacturers of porcelain enameled iron sanitary ware.

1 Q. This meeting was where and when?

A. On February 1, at Pittsburgh, in the Arrott Building.

Q. State who was present at that meeting.

A. I think there was a very fair percentage of manufacturers present.

Q. A meeting of the association, was it? A. Yes.

Q. Do you recall the people present?

A. Mr. Wayman was there, Mr. Cline and Mr. Hoelscher were there; the reference to the license agreement was made at an informal meeting held after the regular meeting.
2 It was not discussed openly at the regular meeting. There had been discussions regarding license agreements prior to that, in an informal manner.

Q. Did any one ask for an expression of opinion as to whether the manufacturers present were in favor of a license agreement?

Mr. NOBLE: I object to the question. Let the witness state what transpired rather than leading him by asking questions which suggest the nature of the answer which the counsel for Government desires.

3 Mr. GROSVENOR: Just read the question.

The stenographer then read the question.

THE WITNESS: Shall I answer?

Mr. GROSVENOR: Yes.

Mr. NOBLE: Note the same objection.

A. I don't believe the question was put as to who was in favor of it. There was some discussion in regard to it and some expressed their opinion.

Q. Was Mr. Torrance present at the meeting?

A. I don't remember whether he was present.

4 Q. Was Mr. Cline present?

A. Yes, I am quite sure he was, and Mr. Hoelscher was present.

Q. Mr. Kohler, you were subpœnaed to produce certain papers, were you not? A. Yes, sir.

Q. Have you produced them? A. I have.

Q. I show you a letter dated February 7, 1910, on the letterhead of Edwin L. Wayman and addressed to Walter J. Kohler, President J. M. Kohler Sons Company, and ask

you if that is a letter received by your company on or about that time from Mr. Wayman? A. It is. 1

Q. And were these schedules (indicating) attached to that letter? A. They were.

Mr. GROSVENOR: I offer this letter, consisting of two pages, with three pages of schedules attached, in evidence, without the pencil marks on the last page, as "Petitioner's Exhibit No. 141."

Letter referred to and schedules referred to were then marked and filed as "Petitioner's Exhibit No. 141." 2

BY Mr. GROSVENOR:

Q. (Reading):

"Feb. 7th, 1910.

"Walter J. Kohler, Pres.,
J. M. Kohler Sons Co.,
Sheboygan, Wis.

"Dear Sir:

"Referring to the informal discussion that took place after the Regular Meeting regarding Resale Prices and Licensee Arrangement. 3

"Have you any patents that you would be willing to assign along with those owned by the other Companies, for the purpose of this Arrangement. If such is the case will you kindly send me the following information as quickly as possible."

This is a copy of the Petitioner's Exhibit No. 12 which is already in evidence. Now, did you reply to that letter?

A. Yes, sir.

Q. Did you send him a list of your patents?

A. I did not.

Q. Was there or not any meeting in March, 1910, at which you were present and at which there was a discussion of a license agreement? 4

A. A meeting at the Chicago Athletic Club among a number of manufacturers in this line.

Q. When was that?

A. In March— I don't remember the exact date, but I think the second of March.

Q. Who was present at that meeting?

1 A. Mr. Torrance of the Standard Sanitary Manufacturing Company; Mr. Herman Hoelscher of the L. Wolff Company; Mr. Cline of the United States Sanitary Manufacturing Company; Mr. McCrum of the McCrum-Howell Company; Mr. Gates of the McCrum-Howell Company; Mr. Wayman; Mr. John B. Murphy of our company and myself.

Q. Who called that meeting?

A. I think Mr. Wayman did, the latter part of February.

Q. What was the subject of discussion at that meeting?

A. Why, it was based entirely on the license agreement
2 or arrangement.

Q. Was the subject of the assignment of patents discussed? A. No, I am quite positive.

Q. Did Mr. Torrance express himself as in favor of a license agreement?

Objected to as leading.

Q. Did or not Mr. Torrance express himself in favor of a license agreement?

Mr. NOBLE: I object for the same reason.

3 A. They were practically all in favor of it except ourselves. They were all in favor of it except ourselves.

Q. Did you receive during the months of March and April correspondence from Mr. Wayman respecting this license agreement? A. I am quite sure we did.

Q. You were subpœnaed to produce those letters; have you produced them? A. I have.

Q. I show you a letter dated February 25, 1910, from E. L. Wayman to you and ask you if you received that letter? A. I did.

Mr. GROSVENOR: I offer that letter as "Petitioner's
4 Exhibit No. 142."

Mr. NOBLE: You have already identified these same letters and introduced them during Mr. Wayman's examination, and this only tends to enlarge the record.

Mr. GROSVENOR: The letter of February 7, Exhibit 12, was objected to when I introduced it.

Mr. NOBLE: I don't know about that.

Mr. GROSVENOR: I want to introduce at this time,

and I will suggest that the original which I will now present be substituted for the copies that were offered in Pittsburgh, the following letters: 1

Mr. NOBLE: I have no objection to that except any objections which I may have made to the materiality of them.

Mr. GROSVENOR: Very well.

Q. Mr. Kohler, did you receive from Mr. Wayman at any time during the latter part of 1909 a proposed draft of a proposed license agreement?

A. We did, a tentative plan.

Q. I show you a paper which you have produced under subpœna and ask you if that is the paper received? 2

A. It is.

Q. On or about what time?

A. Why, in the fall of 1909.

Mr. GROSVENOR: I offer this paper as "Petitioner's Exhibit No. 143."

Paper referred to was then marked and filed as "Petitioner's Exhibit No. 143."

Q. I will read parts of this: "In order that there may be some legal arrangement for holding together the various manufacturers of Sanitary Enameled Ware and enable them to secure business on a continuous and profitable basis at price deferentials that will insure each a fair proportion of the business, I wish to ask if your Company would be amenable to enter into a licensed patent arrangement with the writer along the lines of the attached proposed arrangement." Did you have any discussions with Mr. Wayman after he gave you this paper? 3

A. Not any serious ones as far as we were concerned, because we did not take the matter seriously.

Mr. NOBLE: I move that the answer be stricken out as irresponsive to the question. 4

Q. Did he ask you what you thought of the license agreement?

A. They had not gotten to the stage where they were taking signatures, but he did ask our opinion about it.

Q. And what did you tell him?

A. We were opposed to it.

1 Q. This was the latter part of 1909? A. Yes.

Q. Did you receive any other proposed draft later than this one, from Mr. Wayman? A. Yes, sir.

Q. Will you look at this book which you have produced under subpœna as correspondence between Mr. Wayman and you and see if you can find it in that book?

A. I think the first was that letter spoken of of February 7. This is the next one. (Referring to Exhibit No. 141.)

Q. I show you Petitioner's Exhibits Nos. 8 and 10, being sample copies of proposed forms of license agreement and jobber's agreement, respectively, and ask you if Mr.
2 Wayman ever gave you or mailed to you any papers of that description?

A. Yes, sir; shall I go through them and see if there is any in between this letter of February 7, and the other one?

Q. No; do you recall about what time it was that you received these copies of these forms?

A. Well, during the first quarter of 1910, while this thing was in a period of development.

Q. Was your company represented at any meeting in New York City, on March 29? A. It was not.

Q. Or on March 30? A. It was not.

3 Q. Did you receive any telegrams from Mr. Wayman about that time? A. We did.

Q. A copy of a telegram of March 29, 1910, has been put in evidence as one of the Petitioner's exhibits. Will you see if you can find the original of that in this book?

A. Yes, here it is.

Mr. GROSVENOR: I offer that telegram in evidence as "Petitioner's Exhibit No. 144."

Telegram referred to was then marked and filed as "Petitioner's Exhibit No. 144."

Mr. GROSVENOR: That telegram reads as follows:
4 "Walter J. Kohler, Pres. J. M. Kohler Sons Co., City. All manufacturers except you and Weiskittel represented at meeting Weiskittel here tonight fifteen members here in person balance by letters and wire after thorough consultation with attorney Jackson of Noble, Jackson and Hubbard we are all satisfied entire proposition is absolutely legal and more feasible and easier to handle than electrical proposition which has been in force several years

sense of meeting favorable to license agreement and resale proposition 91 per cent. of production voting favorable some await consultation and consent of their associates or counsel members desire your wire answer in time for tomorrow's meeting called for ten a. m. * * * E. L. Wayman." Did you see Mr. Wayman at any time after receiving that telegram? 1

THE WITNESS: That was March 29?

Mr. GROSVENOR: This was March 29, 1910.

THE WITNESS: I did.

Q. Where? A. At our office in Chicago. 2

Q. What did he say at that time?

A. Why, he brought with him decisions of a rubber tire case, and I think of the J. I. Case Threshing Machine Company and possibly some others, to show that these plans were legal and consequently the one being considered was legal.

Q. Did he ask you to join?

A. Why, I don't remember the specific question, but his purpose there was to get us to join.

Q. Did you refuse? A. We did.

Q. I ask you to look through these papers that you have produced under subpœna and just give the names and dates of certain of them and have them marked for identification. 3

A. This (indicating) is Mr. Wayman's telegram to us of March 31; that is the time we received it.

Paper referred to was then marked as "Exhibit No. 9, for identification, offered by Petitioner."

THE WITNESS: Our answer of March 31 to Mr. Wayman (indicating).

Letter referred to was then marked as "Exhibit No. 10, for identification, offered by Petitioner." 4

THE WITNESS: Mr. Wayman's telegram of March 31 (indicating).

Telegram referred to was then marked "Exhibit No. 11, for identification, offered by Petitioner."

THE WITNESS: Our letter of March 31 to Mr. Wayman (indicating).

Letter referred to was then marked "Exhibit No. 12, for identification, offered by the Petitioner."

THE WITNESS: Our letter to Mr. Wayman of April 12 (indicating).

Letter referred to was then marked "Exhibit No. 13, for identification, offered by Petitioner."

Mr. GROSVENOR: Now I offer in evidence the letter of March 31, on the letterhead of E. L. Wayman, 1509 Arrott Building, Pittsburgh, and addressed to W. J. Kohler Company, President J. M. Kohler Sons Company, with two resolutions attached and a schedule of preferential discounts also attached, the whole exhibit consisting of four sheets, as "Petitioner's Exhibit No. 145."

Papers referred to were then marked and filed as "Petitioner's Exhibit No. 145."

Q. Were these papers attached and enclosed with this letter? A. They were.

Q. Also this sheet of preferential discounts? A. Yes.

The letter which is part of Petitioner's Exhibit No. 145, reads as follows:

EDWIN L. WAYMAN
1509 Arrott Building
Pittsburgh

W. J. Kohler, Pres.,
J. M. Kohler Sons Co.,
Sheboygan, Wis. March 31st, 1910.

"Dear Sir:—

I attach copies of the preliminary agreements, with signatures attached, that were entered into at the Special Meeting of the Manufacturers held at New York March 29th and 30th.

In accordance with the Resolution adopted for the appointment of a special Committee to conclude the matter, the following gentlemen were elected by ballot.

T. R. Barnes
A. H. Cline, Jr.
Howard T. Gates
H. M. Hoelscher
F. J. Torrance

This Committee will begin a special ten day session at Pittsburgh beginning probably the latter part of next week. Will you, therefore, kindly study over

carefully the various paragraphs in the License Agreement and Jobbers' Agreement, and if you have any suggestions or amendments to offer, kindly write me *in detail* at once or make arrangements to appear before the *Committee*. In case you decide to take up the matter in person please write me beforehand regarding such matters as you may have to offer, and I will advise you the date on which the Committee will meet with you. 1

In the absence of any reply from you, the Committee will take it for granted that the License and Jobbers Agreements as printed, copies of which you have, are satisfactory to you, together with the "differentials" allotted to your Company in accordance with the attached sheet. If the differentials allotted your Company do not meet with your approval please state fully your views and reasons. 2

Your very prompt attention to this entire matter is requested in order that the matter may be concluded within the shortest possible time.

Yours very truly,

(Signed) E. L. Wayman.

Q. I show you a letter of April 16 addressed to you and received by you from Mr. Wayman, was it? A. It was. 3

Q. Was that list of preferential discounts attached to it? A. Yes.

Mr. GROSVENOR: I offer that in evidence as "Petitioner's Exhibit No. 146," without the pencil marks.

Q. Did you see Mr. Torrance at any time in May, 1910?

A. I did.

Q. Where? A. At our Chicago office.

Q. Was any one else present?

A. Mr. Clifford of the L. Wolff Manufacturing Company and Mr. Theodore Ahrens, president of the Standard Sanitary Manufacturing Company; Mr. Murphy of our company, and myself and a stenographer were also present. 4

Q. Was Mr. Wayman present? A. He was not.

Q. Who made the appointment for that meeting?

A. Mr. Ahrens.

Q. How did he make the appointment?

A. He wrote me a letter.

Q. I show you a letter which you produced under

1 subpœna and which is dated May 7, 1910, and addressed to Mr. Robert Kohler, of J. M. Kohler Sons Company; was that letter received by you? A. Yes, sir.

Mr. GROSVENOR: I offer that letter in evidence as "Petitioner's Exhibit No. 147."

Letter referred to was then marked and filed as "Petitioner's Exhibit No. 147."

Q. Who is Mr. Ahrens?

A. He is president of the Standard Sanitary Manufacturing Company.

Q. Who is Mr. Torrance?

2 A. He is vice-president and chairman of the board of directors of the Standard Sanitary Manufacturing Company.

Mr. GROSVENOR: I will now read this letter which has been offered as Petitioner's Exhibit No. 147. (Reading):

"Pittsburgh, Pa., May 7, 1910.

"Mr. Robert Kohler,
of J. M. Kohler Sons Co.,
Sheboygan, Wisc.

"Dear Sir:—

3 "Mr. Torrance and I have just returned from New York, where yesterday at a full and representative meeting of manufacturers we have all signed up and entered into the license agreement and resale plan on enameled ware which, as you know, has been under consideration for several months.

"Every manufacturer present, after a full and free discussion of the whole plan, signed the agreement without any proviso. We hope to have the plan in force by June 1st, but all of us are already obligated to go ahead.

4 "I regret very much that you did not attend this meeting and Mr. Torrance and I would like to meet you in Chicago the latter part of next week if it is agreeable to you. We want to discuss this plan with you and see if we cannot get you to reconsider and join in with the rest of us. The Iron City Concern and yourselves are the only people of importance who have not signed. We think you ought to give this plan a fair trial.

"During the last three months I have traveled extensively all over the United States and have interviewed a great many of the jobbers on this resale proposition. The jobbers are almost a unit in favor of it. The Niagara Falls meeting passed a resolution unanimously approving it. The local associations in a number of cities have demanded that we put such a resale plan in effect. It is not possible to carry through a resale price without a strong organization among the manufacturers and without some manner of controlling prices. The license agreement we have entered into with Mr. Wayman offers a legitimate and lawful way of doing this. We have submitted the plan to our attorney and he have advised us that it is allright.

"I also had a thorough explanation from Mr. Jackson and so far as I can see, there are no legal difficulties in the way.

"Let me explain again, please, that so far as the Standard Sanitary Manufacturing Company is concerned, we would have preferred to conduct our business independently and without such an arrangement as we are now in. We earned over $1,000,000.00 net last year and feel that we can take care of ourselves under any and all conditions.

"There are two reasons why we went into this agreement:

"First because our customers all over the United States have demanded it.

"Next owing to the great amount of trouble which the jobber has had with enameled iron ware and the small margin of profit on which he was compelled to sell it, there is a growing disposition on the part of the jobber to handle and push other lines which he can substitute for enameled iron and on which he claims to make a better profit. The resale plan offers the jobber a fair profit and will remove the incentive to push other goods.

"The plan under which we propose to operate is far reaching and leaves no middle ground to stand on. I can assure you that everybody is most anxious to have you with us as we need both your advice and counsel and your support.

1 "Please wire me Monday in care of this office and let me know whether you will meet us and if so, on what day. Friday would suit Mr. Torrance best.

"Yours very truly,

Theo. Ahrens

"TA" President."

Q. It was pursuant to that letter that that conference was had to which you referred? A. It was.

Q. What was the date of that conference?

A. Friday, May 13.

Q. At your Chicago office?

2 A. At our Chicago office.

Q. What was said, if anything, about the license agreement by Mr. Ahrens on that day?

A. Mr. Ahrens did most of the talking in explaining the plan and stating the necessity for it; he emphasized that the jobbers requested it.

Q. What did you say?

A. I put the question to them—I put the question to them, "You will admit that this equipment covered by the Arrott patent is not necessary in the manufacture of enameled ware," to which they practically assented. I then said, 3 "Then, its purpose is purely for the purpose of entering into an arbitrary price agreement?" Mr. Torrance said, "If you put it that way." I then said, "The patent in that case is purely a subterfuge and this plan would be contrary to the laws of Wisconsin, which are very strict on that, and also the Sherman Anti-Trust Law, and we will not go in it. Mr. Clifford was impressed with the word "subterfuge." He said that was a very good word. He also made the statement that the Government could do nothing more than break up the show.

Q. How long was that meeting?

4 A. Oh, it lasted probably from an hour to two hours.

Q. I show you a letter on the letterhead of the Standard Sanitary Manufacturing Company addressed to J. B. Murphy, vice-president J. M. Kohler Sons Company, First National Bank Building, Chicago, Illinois, and ask you if your company received that letter, that is, Mr. Murphy?

A. It did, at the Chicago office.

Mr. GROSVENOR: I offer that as "Petitioner's Exhibit No. 148."

Paper referred to was marked and filed as "Petitioner's Exhibit No. 148." 1

Q. I ask you if you received this letter of May 19 from the Standard Sanitary Manufacturing Company to your company and signed by Mr. Ahrens as president?

A. We did.

Mr. GROSVENOR: I offer this letter of May 19, addressed to Mr. Walter Kohler, from the Standard Sanitary Manufacturing Company, as "Petitioner's Exhibit No. 150."

Letter referred to was marked and filed as "Petitioner's Exhibit No. 150." 2

Q. And were these two sheets (indicating) enclosed?

A. No, sir; I think that is Mr. Murphy's answer to that letter. That letter was sent to Mr. Murphy but not signed, but Mr. Ahrens' initials are there, his stenographic initials "T. A."

Mr. NOBLE: I object to the admission of this letter; it is not sufficiently identified.

Mr. GROSVENOR: I will offer it now and have it identified more sufficiently later. I offer the letter as "Petitioner's Exhibit No. 149." 3

Letter referred to was then marked and filed as "Petitioner's Exhibit No. 149," and was, at request of counsel, attached to letter dated May 18, from the Standard Sanitary Manufacturing Company to Mr. J. B. Murphy, which is known as "Petitioner's Exhibit No. 154."

Mr. GROSVENOR: To which of these three letters does counsel object?

Mr. NOBLE: I object to "Petitioner's Exhibit No. 148," which was stated by the witness to be a letter from Mr. Ahrens which is not signed. 4

THE WITNESS: It is only signed with the letters "T. A."

Examination Suspended.

JOHN B. MURPHY, a witness of competent age, produced on behalf of the petitioner, being first duly sworn, testified as follows.

DIRECT EXAMINATION BY Mr. GROSVENOR:

Q. Mr. Murphy, what is your position?

A. Vice-president of the J. M. Kohler Sons Company.

Q. I show you this letter which the Government has introduced as Petitioner's Exhibit No. 148, and ask you if that is a letter received by you in the course of the mail?

A. Yes, sir.

Q. I show you this letter of two yellow sheets which has been introduced as Petitioner's Exhibit No. 149, and ask you if that is your reply to Petitioner's Exhibit No. 148? A. Yes, sir.

Examination Suspended.

WALTER J. KOHLER, resumed the stand for continuation of direct examination, and testified as follows.

DIRECT EXAMINATION (continued):

Mr. GROSVENOR: I will now read Petitioner's Exhibit No. 148. (Reading):

"Pittsburgh, Pa., May 18, 1910.

"Mr. J. B. Murphy, Vice Prest.,
J. M. Kohler Sons Co.,
First National Bank Bldg.,
Chicago, Ills.

"Dear Sir:—

"In discussing with you the proposed license and resale arrangement during my recent visit to Chicago, I tried to make it plain to you that the principal reason; in fact, the one which really decided us to advocate this plan was the unanimous demand made by the jobbers of the United States for some such plan and by which they could obtain a better profit on the sale of our product than they now enjoyed.

"You seemed to doubt this assertion, which was repeatedly made by me and I regret to say that you seemed to think that we were not sincere or acting in good faith in the whole movement. I am sending you therefore, a few of the letters which I wrote to my partners during my recent trip West and which will indicate how we felt about this subject.

"Please note in my letter of March 9th the statement: 'I understand that this resale proposition is

being agitated to a considerable extent and it may be 1
that it will force us to do some things which we would rather not do.'

"Again on March 21st in my letter to Mr. Torrance, I say: 'It is evident from what you write me that we cannot afford to take a position in this matter which would be directly opposed to our customers' wishes and I am glad to know that we are working in harmony with the other manufacturers along this line.'

"Again on March 25th from Los Angeles, note the sentence on the second page: 'It may be that our 2
customers will force us to go into such a deal.'

"Again on April 9th from Seattle: 'It is such a radical departure from what we have been doing for the last ten years that I am very unwilling to agree to it but on the other hand, if we do not do so, we will be blamed by our customers and it may hurt us.'

"Please note also copy of Mr. Myler's letter of February 2nd addressed to me.

"These letters should convince you that for the past four months we have been debating and discussing this subject among ourselves and that the 3
reason which finally decided us to favor this plan was that we believed it was to our customers' interests to put it through and that we thought that the interest of our customers demanded it. I want to therefore again deny your assertion that I am a philanthropist. I am not but I am interested in the welfare of the people to whom we sell our goods and I believe that it is only good business policy on our part to help them make a profit if we can consistently do so.

"Please return the letters after you have read 4
them.

"Yours very truly,

"TA" President."

By Mr. Grosvenor:

Q. Did Mr. Murphy send the letters therein referred to to you?

A. That is Mr. Ahrens' letter; Mr. Murphy returned them direct.

1 Q. You did not see them, then?
A. I don't remember whether I saw them or not; possibly.

Mr. GROSVENOR: I will now read Petitioner's Exhibit No. 149 (Reading):

"May 20th, 1910.

"Mr. Theo. Ahrens, Pres.,
Standard Sanitary Mfg. Co.,
Pittsburgh, Pa.

2 "Dear Sir:—

"Acknowledging yours of the 18th, the question of selling our goods lower than the Standard was brought up by you at the La Salle in the presence of Mr. Hoelscher, and you stated this was on the regular two-year guaranteed tub and the price was $11.00, which I did admit. I did say, however, that since I had been engaged in this business for about two and one-half years, you had been the main factor in reducing prices the greater portion of that time.

"It is possible that recently, in a few cases, we did
3 quote and sell lower than your prices, but only in spots, and nothing of any consequence.

"I did not state to you that Mr. Myler's check was sent to equal the $11.00 price on the tub, however. In this case you misunderstood me, but that his check was generally sent to equalize prices.

"After this interview at the La Salle Hotel, I took up the question with Mr. Kohler, and read to you Monday evening before you left, giving you the exact prices that we made in a few special cases only.

"So far as the Eastern market is concerned, one of
4 the principal manufacturers and a very reputable one who does quite a business in the East, stated that there was no bottom to New York prices.

"I wish to say that any reductions that we have made have not been wholesale, horizontal reductions the same as your company have made, and are not so damaging to the manufacturer or the trade generally, for that reason.

"We note that in the Eastern market you have

not given a special rebate beyond the regular printed carload prices to *all the trade*. We do not know that we said to you that in any special market you did this. 1

"As to the man who you say lies, is it not possible that there is a mistake *somewhere?* We know of no price agreement, and you accused us of selling below your prices, which, in a few cases, we did admit. We believe it is our privilege to do so, owing to your operations in this direction for a very long period.

"We omitted to state that in the conversation with Mr. Torrance at the Hotel La Salle, we were accused also of selling our goods in the East on the same basis as many of the inferior class of manufacturers, and from the prices we gave you, and the prices you now accuse us of making, you must admit that you are very badly mistaken. 2

"Yours very truly,
"J. M. Kohler Sons Co.,
"Vice Prest."

Mr. GROSVENOR: Now I will read Petitioner's Exhibit No. 150. (Reading):

"Pittsburgh, Pa., May 19, 1910. 3

"Mr. Walter Kohler, Prest.,
J. M. Kohler Sons Co.,
Sheboygan, Wisc.

"Dear Sir:—

"Since my return to Pittsburgh our Executive Committee has again gone carefully over the proposed license and resale arrangement and we have decided to go ahead with it and put it through and into effect June 1st. 4

"We write to advise you of this fact and can only express the hope that you will reconsider your determination not to become a party to this agreement and will join with us in this movement which, if successful, is bound to benefit our customers greatly as it will insure a fair profit on a line of goods which at this time is fiercely competitive and on which the profit has been altogether out of proportion to the

1 trouble, annoyance and expense of handling the line.

"Yours very truly,

"TA
enc

Theo. Ahrens,
President."

Q. The pencil notations in this letter were made in your office?

A. They were made by me. I forwarded that letter to Mr. Murphy.

Q. Was that letter answered?

2 A. Yes, it was answered.

Q. I show you this letter which you have produced at my request and ask you if that is a copy of your reply to Petitioner's Exhibit No. 150? A. It is.

Mr. GROSVENOR: I offer that letter in evidence as "Petitioner's Exhibit No. 151."

Letter referred to was then marked and filed as "Petitioner's Exhibit No. 151."

Mr. GROSVENOR: That letter reads as follows:

"May 21st, '10.

"Mr. Theodore Ahrens, Pres.,
3 Standard Sanitary Mfg. Co.,
Pittsburg, Pa.

"Dear Sir:—

"Acknowledging your letter of May 19th with enclosed copy of your letter of May 18th to Mr. Murphy at Chicago. We note your decision to proceed with the license agreement and resale arrangement as planned out and are not surprised, as we did not believe that our staying out would affect your determination if you felt that it was best for yourselves
4 and your customers. As you know, we have not been favorable to a *license agreement* at any stage of the proceedings but we gave the subject very serious consideration before coming to the definite decision not to become parties thereto, and our position has not changed since meeting you at Chicago May 13th. The resale arrangement may be of benefit to the jobber and we do not object to this plan in the least.

"Your letter to Mr. Murphy will, no doubt, be answered by him. 1

"Very truly yours,

"J. M. Kohler Sons Co.,

per —

"WJK-W" Pres."

Q. Did you receive a reply to that letter?

A. I did not—I am quite sure I did not.

Q. Mr. Kohler, I show you what is part of Exhibit 30 of the Government, being a printed book, and ask you if that contains the names of the principal jobbers in that line in the United States? A. It does. 2

Q. By that, I mean the principal jobbers of sanitary enameled iron ware?

A. Yes, that is right; I would like to add to that that the wholesale hardware dealers also handle the common kitchen sinks with the backs.

Q. All the principal jobbers of bathtubs would be in that book, wouldn't they? A. Yes.

Q. And of lavatories?

A. Yes, sir; practically all; there may be one or two out, but that would be all.

Q. How long has your company been in business, Mr. 3 Kohler? A. Since 1873.

Q. Who founded it? A. My father.

Q. And did you succeed him in the presidency?

A. I succeeded my brother in the presidency, Robert Kohler.

Q. When did you begin to manufacture sanitary enameled iron ware?

A. We manufactured sinks in the 80's, we started about '84 or '85.

Q. You mean porcelain enameled sinks? A. Yes, sir.

Q. When did you start to manufacture lavatories or 4 washbowls? A. In the early 90's.

Q. And bathtubs? A. In the early 90's.

Q. Was your company one of the earliest to enter into this line of manufacturing? A. It was.

Q. What other companies were engaged in that line of manufacture which are now doing business?

THE WITNESS: Do you want the constituent companies of the Standard Sanitary Manufacturing Company, which are still today a part—

Mr. GROSVENOR: Yes, I want the names of the early manufacturers.

A. The L. Wolff Manufacturing Company of Chicago; the J. L. Mott Company—

Q. When did Wolff start, about what time?

A. I don't know when they started to make enameled ware, but I presume the later 80's or the early 90's; the Jordan L. Mott Company of New York, who had business prior to 1880; the constituent companies of the Standard Sanitary Manufacturing Company, which was then the Standard Manufacturing Company, and Dawes and Myler and Ahrens, in that class did not start to make enameled sanitary goods until about '95.

Q. How about the Cahill Iron Works?

A. Not until after 1900. Do you want my knowledge of the history of all of them?

Mr. GROSVENOR: Yes.

A. (Continuing): The United States Sanitary Manufacturing Company of Pittsburgh started after 1900; they were formerly affiliated with the Standard Manufacturing Company, and the Standard Sanitary Manufacturing Company, after 1899—after the merger—and they formed an independent company after 1900. The Iron City Manufacturing Company, to my knowledge, went into the business after 1900; the Blairsville, McVay & Walker, possibly in the late 90's, and the Washington Iron Works within the last two or three years. The Rundel Manufacturing Company of Milwaukee, about 1900; the National Manufacturing Company of Salem, Ohio, within the last two or three years.

Q. How about Weiskittel?

A. Weiskittel is an old company; I think they manufactured in the late 90's—they had been in the manufacture of stoves long before that.

Q. But you are discussing now only as to sanitary enameled iron ware? A. Yes, sir.

Q. Now, how about the Wheeling Enameled Ware Company?

A. After 1900; I think they went into the hands of receivers and reorganized; the Union Sanitary of Noblesville, Indiana, was formed about 1902—that is, they formed then under the name of McElway & Richards, and they went in receivers' hands.

Q. And the Colwell Lead Company? A. Since 1900. 1

Q. And the Barnes Manufacturing Company?

A. Since 1900; the Humphryes Manufacturing Company also. This is purely my impression of it.

Q. You have devoted your life to this business?

A. My business life; yes, sir.

Q. Of these companies which you have named, which are the large companies?

A. The Standard Sanitary Manufacturing Company, which is a consolidation; the L. Wolff Company; the United States Sanitary Manufacturing Company; the Iron City is also a very important factor in the business, and the J. M. 2 Kohler Sons Company.

Q. Your company is one of the largest? A. Yes, sir.

Q. Now, I want to get some description on the record as to how the ordinary porcelain enameled iron bathtub is made.

THE WITNESS: Do you mean the porcelain enameling—

Q. Supposing you go back to 1890—was the bathtub made the same then as it is to-day?

A. Practically, but a little economy has been worked in.

Q. Will you describe the method? 3

Mr. NOBLE: May I ask if Mr. Kohler means to qualify as an expert on the enameling process?

Mr. GROSVENOR: Mr. Kohler has stated that he manufactures this line of goods and I want a description on the record of how porcelain enameled bathtubs are made.

Mr. NOBLE: I have no objection, but Mr. Kohler is the head of the concern, and all I want to know is whether he will answer from a commercial point of view or from the manufacturing point of view. 4

Q. Mr. Kohler, you are president of the company?

A. I am.

Q. Do you watch the manufacturing in the factory at any time? A. Yes, sir.

Q. You oversee the work?

A. I have very close touch with it. I did oversee it for a number of years. I am not an expert, though.

Q. But you have worked in the factory? A. Yes.

1 Q. And you know the process?

A. Yes, I know the process very well.

Q. Now, will you describe the method in which an ordinary porcelain enameled bathtub is made. What is the chief material, first? What is the foundation of the tub?

A. Cast iron.

Q. After the tub is cast, describe the process from that point?

A. It is cleaned and finished preparatory to applying the enamel. The process of enameling consists of an intermediate coat known as a ground or slush coat which is
2 fired in. It is applied on the casting and then fired; then the porcelain enamel is applied on this preliminary or first coat.

Q. By porcelain enamel you mean the dust?

A. The dust, which is the porcelain enamel, composed of several ingredients, the forms of which are not generally made public and do not necessarily enter into this examination. I am speaking of the process as being practically general in use in the last 15 years. Prior to that time some tubs had been made by the wet process, so in this examination I will speak only of the so-called dry process, the ap-
3 plying of the porcelain enamel in the powder form.

Q. Which has been used for past fifteen years?

A. Longer than that by some manufacturers.

Q. How long has your company used that form?

A. About fifteen or sixteen years. The bathtub or article after being heated in the furnace is withdrawn and the porcelain enamel is sifted thereon. When a sufficient amount has been applied, the article is returned to the furnace for the further fusing of the material on the casting, and depending upon the grade of the article, it is withdrawn several times and the operation repeated. The usual method in effect had been to apply this enamel through a
4 sieve attached to the end of a long handle which was operated or vibrated by an iron instrument or handle in the hands of the operator. Do you want me to continue and describe the Arrott patent?

Mr. GROSVENOR: Yes.

A. (Continuing): The Arrott patent consists of an air hammer—it governs the vibrating of this sieve by mechanical means instead of by the hands of the operator.

Q. The Arrott patent is known as an automatic dredger? 1

A. Their claims are that it is a mechanically operated dredger; the patent was applied for in 1899 and granted in the same year.

Q. When did your company first use the automatic dredger?

A. Our company used the automatic dredger four years prior to the granting of this patent.

Q. Have you finished the description of the way porcelain enamel is made?

A. I did not finish the description of the Arrott patent, if that is essential.

Q. We can go into that later. After the porcelain dust is scattered over the tub, then the tub is taken back to the furnace? A. Yes, and the— 2

Q. The highest grade is the five year guaranteed tub?

A. So-called by the Standard Sanitary Manufacturing Company. Our tubs are not guaranteed; we place our label on them and say that our name is a guarantee that the tub is first class. We do not use a time guarantee. That has never been taken very seriously by us.

Q. As I understand the pneumatic dredger which holds the porcelain dust— 3

A. The sieve holds the powder; the dredger is attached to the sieve.

Q. Before the invention of the automatic dredger or Arrott patent the dust was held in a sieve on a long handle and the workman, by hitting the handle spread the powder on the tub? A. Yes.

Q. By the enameling process, then, you mean the spreading of the powder on the tub when the latter is hot?

A. That is as applied by the dry process; the wet process is different.

Q. Is the wet process used today? 4

A. Not on bathtubs; it is used on kitchen ware.

Q. The automatic process has something which, either by electricity or compressed air, is an arrangement attached to the handle, and by pressing a button the sieve is struck rapidly and the powder comes through just the same as before? A. Yes, but the blows are more rapid.

Q. The difference between the two lies only in the application of the power which hits the dredge so as to make the powder come out? A. Yes, sir.

Mr. NOBLE: I object to that; he has not qualified as a patent expert. If he just wishes to explain what is done I have no objection, but I do object to that question and answer.

Q. You have hand dredgers and automatic dredgers in your factory?

A. I think you are asking me a question which I ought not to answer. Our company is not on trial here.

Q. Don't answer if you do not want to. I am just trying to get some details of the business. Take the small articles like the lavatory; is the enameling powder applied to the lavatory in the same way as it is to the bathtubs?

A. The process is identical. I understand that some manufacturers use the pneumatic dredgers on lavatories and some do not. They use it on different portions of the bathtubs, and they use the hand process on the other.

By Mr. NOBLE:

Q. By courtesy of counsel for the Government I would like to ask you whether you are now speaking from general information or from observation in factories which you have visited?

A. Well, it is largely from general information; I have visited some factories where the process is used.

Mr. NOBLE: Then I object to any testimony except what Mr. Kohler has referred to as having seen, and knowing of his own personal knowledge, and I ask that the answer just given be stricken out.

By Mr. GROSVENOR:

Q. That is to say the powder is sifted on the lavatory when it is red hot? A. Yes, sir.

Q. And that putting on of the powder applies in the case of all these articles manufactured by the sanitary enameled iron ware manufacturers?

A. Practically, to my knowledge.

Q. Of these manufacturers of sanitary enameled iron ware, do most of them produce a complete line of goods?

A. The larger companies do.

Q. All those you have named today as being the larger companies? A. Yes, they practically do.

Q. And there are certain standards which are adopted in the trade? A. Yes, sizes. 1

Mr. GROSVENOR: That is all.

Examination Suspended.

At this point a recess was taken for one hour, the hearing to resume at two o'clock p. m.

After Recess.

WALTER J. KOHLER, a witness heretofore produced and sworn, resumed the stand for cross examination, and testified as follows. 2

CROSS EXAMINATION BY Mr. NOBLE:

Q. Mr. Kohler, in reply to Mr. Grosvenor's question you named all the manufacturers of sanitary enameled iron ware or porcelain enameled iron ware, whichever you call it, this morning; do you think so? A. Practically, yes.

Q. Have you thought of any others since then?

A. I haven't given it any thought since then.

Q. I understood you to say that several years ago at an informal conference in the Auditorium Hotel something was said about a license plan or license agreement?

A. I didn't use that word, I said for an arrangement; the talk was regarding an arrangement for maintaining the price through the use of the Arrott patent. 3

Q. Was that the meeting of the Supply Association?

A. It was at that time. It was an informal meeting held by a number of the manufacturers.

Q. What was the meeting of that association?

A. I suppose the Enameled Ware Association.

Q. Wasn't it the Central Supply Association?

A. Not at this informal meeting of the manufacturers. The jobbers had nothing to do with it. The meeting was of the Central Supply Association, and an impromptu meeting was called of the manufacturers who were in attendance at the other meeting. 4

Q. I only want to fix a date by that, that is all. A. Yes.

Q. The informal conference you are talking about occurred after a meeting of the Central Plumbers' Supply Association? A. Yes.

Q. Do you recall Mr. Day of the Day-Ward Company being there?

1 A. It is very possible; he was still alive at that time.

Q. You do not remember him being there, though?

A. No.

Q. Do you remember Mr. Wayman being there that day?

A. I don't think so; no, sir; he may have; I don't remember it.

Q. Do you remember that after meeting or after that day a committee went down to Trenton to see how the Pottery Selling Company conducted its business?

THE WITNESS: Do I remember that?

Mr. NOBLE: Do you recall anything about that?

2 A. No.

Q. Do you remember Mr. Barnes being at the Auditorium Hotel that day?

A. It is possible, but I do not remember specifically; Mr. Barnes is in the habit of attending those meetings.

Q. Do you remember a discussion at or about that time of getting up a selling company to sell goods of the enameled ware manufacturers?

A. I cannot say that I do; it was not brought up specifically to us. It may have been discussed, I don't know, but not in my hearing, to my knowledge.

3 Q. The meeting, as you recall it, was in the winter of 1907 and 8?

A. No, it was in the fall, October, 1908—October of that year.

Q. How do you fix that date, Mr. Kohler?

A. Well, I remember it specifically; it was the first year Mr. Murphy was with us. I remember discussing the matter with him for a while.

Q. When did he come with you?

A. The beginning of 1908.

Q. And you remember that it was some time after he
4 came to you that you talked to him about it?

A. It was at that fall meeting in Chicago.

Q. If other gentlemen who were there tell you that you are mistaken about its being in the fall, and say that it was in the spring, would that refresh your recollection? A. Not as to this particular incident, no.

Q. I show you Exhibit 141 consisting of four pages and call your attention to the last page and ask you if

you know in whose handwriting those pencil marks are on there? A. I wrote that. 1

Q. Why did you put it there?

A. Just as a matter of curiosity to see how these things would be worked out.

Q. You were considering, then—

A. Our position up to that time had been consistent that we would not do it.

Q. And you put that down there to see how it would work out if you changed your mind?

A. I cannot say that; I put them there to see what would be the outcome of it. 2

Q. You put that down there to see how the matter would work out if you should change your mind?

Mr. GROSVENOR: I think I offered that exhibit without the pencil marks.

THE WITNESS: Let me see it.

Paper referred to was then shown to the witness.

THE WITNESS: What is the date of it?

Mr. NOBLE: That is dated February 7.

A. Well, if it was worked out this is possibly how it would have worked out or developed.

Q. The way it would apply to your company, you mean? 3

A. Yes.

Q. And you wrote those memoranda in yourself at that time? A. Yes.

Mr. NOBLE: I offer in evidence the pencil notations on the fifth page of Exhibit No. 141, concerning which I have just interrogated Mr. Kohler.

Pencil notations found on the fifth page of Petitioner's Exhibit No. 141 were then marked and filed as "Defendants' Exhibit No. 1."

By Mr. NOBLE: 4

Q. The pencil notations to which I called your attention read as follows, do they not? After paragraph 2, which reads: "Schedules of Ware under License" are written the words "Entire Line."

A. Yes, I put every answer that is down there.

Q. Then after the third paragraph, which reads "Amount of Royalty," you have written "proportioned as at present;" what does that mean?

A. That, as I remember, means that we were all members of the manufacturers' association and contributed proportionately to the expense; that don't mean that each company paid the same amount toward the expense, but it meant that each company paid an amount in proportion to its estimated production; we had no part in placing that proportion. It was submitted to us and we stated that it was satisfactory and would contribute accordingly.

Q. After paragraph 4 which reads: "Amount of Forfeit," you have, "proportioned to size;" what does that mean? A. The size of production.

Q. And has reference to the size—

A. This was never utilized; it was just a memorandum made on a list that had been sent to us and we never made use of it and some of its significance might not be definite.

Q. What did you mean by the words "proportioned to size"?

A. I don't remember, but I presume in proportion to the size of the company.

Q. Compared to the other companies? A. Yes.

Q. After paragraph 5, which reads "prices to be established by," you have written "Executive Committee;" what did you mean there? A. I don't remember.

Q. Paragraph 6 reads: "Resale Price List—Discounts to Jobbers," and you have written "15% over cost;" what did you mean by that? A. I don't remember.

Q. Paragraph 7 reading "Rebates to Jobbers for maintaining Resale Prices," you have written after that "10%;" what did you mean by that 10 per cent?

A. We had a preliminary agreement sent us by Mr. Wayman and this is possibly based on that. Our correspondence will show that we had up to that time not even considered the matter seriously or intended to go into it.

Q. Paragraph 8, reading, "Length of Rebate Periods;" you have written after that, "not less than 3 months;" what did you mean there?

A. I don't know, but I suppose it refers to the preliminary agreement submitted by Mr. Wayman.

Q. Wouldn't it mean that the rebates which you were to pay jobbers should be paid at periods of not less than three months if they retained your resale price?

A. I don't remember that.

Q. In between paragraphs 8 and 9 appear the words

"Price on which rebate applies;" what does that refer to? 1

A. I don't remember. It is not worked out specifically. Is not that put into the shape of a question?

Q. No, there is no question mark after any of them.

A. Some of them were intended so.

Q. I am only asking what you meant by these various answers? A. I don't remember.

Q. Now, paragraph 9 reads: "Agreements to become effective and no Future Delivery Orders to be recognized beyond that date;" and you have written, "Quarterly;" what does that mean?

A. I don't remember just what that meant. 2

Q. Paragraph 10 has nothing written after it, but paragraph 11 reads: "Differentials between Manufacturers," and you have written, "not more than 2½%;" what does that mean?

A. That question had been discussed that the differentials be allowed smaller manufacturers.

Q. After paragraph 12 you have written these words: "Can penalties be enforced." What did you mean by that?

A. I presume if the rebate royalty was withheld whether that could be enforced.

Q. Then you have written the words, "Central Selling Co.;" what does that mean? 3

A. I don't remember specifically what that means unless it was one large selling organization.

Q. You mean one large selling organization to sell the products of other companies including yours, if you decided to go in?

A. I don't say if we decided to go in, but if that was the plan.

Q. You have written the word "Policing;" what did that mean?

A. Mr. Torrance had used that at one of the meetings.

Q. Well, what did you write it for? 4

A. Just as a memorandum; he had meant keeping a tab on the members, as I interpreted it, to see that the different agreements were lived up to.

Q. Now, you have the words, "Direct shipments (blank) % extra," what does that mean?

A. There is a differential, or there used to be a difference between the shipments to customers—in other words, if it was to his own stock there was a charge made.

1 Q. Then you have the words "Territories divided;" what did you mean when you wrote those words?

A. I think Mr. Wayman had submitted to me at one time a plan of the Potteries Selling Company dividing the country into different territories and discounts, and this whole sheet was probably based on the information he had at that time.

Q. Do you recall whether Mr. Wayman submitted that data concerning the Pottery Selling Company shortly after Mr. Wayman, Mr. Day and Mr. Barnes had been to Trenton to see how that company did its work?

2 A. I cannot say. I don't think Mr. Wayman sent me this; I think he showed it to me once.

Q. I don't think I used the word "sent;" I meant did he give it to you or show it to you? In other words, did he tell you about the plan of the Pottery Selling Company as you recall it? A. Yes.

Q. You said you received the other proposed draft of a license agreement, that is, other than the one shown in the letter of February 7th which has been marked as Petitioner's Exhibit No. 141?

THE WITNESS: An earlier one?

3 MR. NOBLE: Yes, an earlier one.

A. I don't remember the exact answer that I made; there were earlier and later drafts.

Q. Have you got those?

A. I think so; I think they are in there. There was one submitted as an earlier one.

Q. What have you done with those?

A. They were brought here under subpœna.

Q. Have you turned them over to counsel for the Government? A. The Government has them.

Q. In Petitioner's Exhibit 144, which is a telegram 4 sent to you on March 29, 1910, by Mr. Wayman from New York, he says: "Entire proposition is absolutely legal and more feasible and easier to handle than electrical proposition;" do you recall what he referred to there by the "electrical proposition?"

THE WITNESS: What is the date of that telegram?

MR. NOBLE: March 29, 1910.

A. Why, I assume that it was the electric lamp proposition. I understand there is a resale price on that. 1

Q. Had Mr. Wayman ever talked to you about that proposition? A. I can't say he had specifically.

Q. Well, unspecifically had he?

A. He may have given it as an illustration. He refers to it there.

Q. You knew about the fact that there was a licensed agreement in respect to electrical lamps, according to your answer? A. I have heard there was.

Q. Do you recall whether Mr. Wayman ever talked to you about that? 2

A. Mr. Wayman, according to my recollection, did tell me once that he had been identified with one of the electrical companies as their representative in the West; whether I got the information that the resale agreement existed for that from him or not, I cannot say. It is just one of these things which you absorb at times. I know of the Selden patent in the automobile business, but I don't know where I first heard of it.

Q. I believe you said you had a talk with Mr. Wayman later in your Chicago office? A. Yes, sir.

Q. At which time he told you about the rubber tire case, the J. I. Case Threshing Machine Company case, and other cases, am I correct? A. That is my impression of it. 3

Q. At the close of that talk did you tell Mr. Wayman that you would take the matter under consideration?

A. I don't remember that we did specifically state that, or that I did.

Q. Did you say anything like that—I don't know if I have the words exactly right or not?

A. It is possible that I may have said that we would give it further consideration.

Q. Did you say anything about taking it up with your attorneys? 4

A. We may have said that we would consult with our attorneys further; we did not give him any encouragement—

Q. Your answer, as I understand you, was that you may have said that you would take it up with your attorneys further?

A. We may have said that, because he brought additional testimony according to his mind which would have a bearing

on the case, and I may have said, "We will submit this to our attorneys."

Q. You have testified, in response to counsel for Government's question about a meeting that took place on Friday, May 13. I understood you to say that Mr. Clifford, Mr. Ahrens, Mr. Murphy, you and a stenographer were present?

A. Yes, sir.

Q. Did the stenographer take notes of what was said?

A. I didn't tell her to, and I haven't asked her whether she has.

Q. In a letter of May 7, 1910, which is Government's Exhibit No. 147, and which is addressed to Mr. Robert Kohler, from Mr. Ahrens— A. Yes.

Q. I presume Mr. Robert Kohler was your brother?

A. Yes.

Q. And that letter was received by you? A. Yes.

Q. In that letter he says: "The Iron City concern and yours are the only people of importance who have not signed"; how important a manufacturing concern in the enameled ware business is the Iron City Manufacturing Company?

A. I think it is quite an important one. It is one of the large companies.

Q. Is it as important in the trade as your company?

A. That depends upon the point of view.

Q. I would like your view.

A. It is a very important factor in the industry.

Q. Do you know whether it is as large, or whether it does as much or more business than you do?

A. I never inquired into that.

Q. Well, compare it with the United States Sanitary Manufacturing Company; is it as important as that company? A. I don't know; I should assume so.

Q. And the J. L. Mott Company, how about that?

A. I don't know; the Mott Company is a very large and important company.

Q. Would you consider it as important as they are, in sanitary enameled ware?

A. I think it is important; it is one of the leading companies in the industry.

Q. Now, the J. M. Kohler Sons Company—is that an important manufacturing company in the enameled iron ware business?

A. That depends on the point of view. 1

Q. I would like to have your point of view, Mr. Kohler.

A. We aim to make it an important factor in the business.

Q. Is it not a fact that the Standard, the L. Wolff, the United States Sanitary, the Iron City and the J. M. Kohler Sons Company are the largest manufacturers of sanitary enameled iron ware in the country?

A. I practically made that statement this morning, I think, in referring to the largest manufacturers.

Q. Where do you sell your product?

A. All over the United States. 2

Q. Your business is a thriving one, isn't it?

A. Satisfactory to us.

Q. I am not directing my questions toward prying into your private affairs; I am just inquiring about the general trade, that is all. Do you sell your ware direct to the plumber or through the jobbers?

A. We sell our output through the jobbers. We do not sell the retailer except in our own town where it is a matter of local pride and a convenience. The plumbers there come out to the factory and get the stuff, but our policy is to market through the jobbers. 3

Q. Do you sell any jobbers not in the blue book which Mr. Grosvenor showed you this morning and which is part of Petitioner's Exhibit 30?

A. I would have to go through our sales account and through the blue book and compare them.

Q. What is your opinion of the matter generally?

A. Our sales cover practically all the leading jobbers in the country.

Q. So you would expect to find your sales made mostly to the men whose names appear there?

A. Yes, those on the blue book. 4

Q. In Mr. Ahrens' letter, which is Petitioner's Exhibit No. 147, he says: "Next, owing to the great amount of trouble which the jobber has had with enameled iron ware and the small margin of profit on which he was compelled to sell it, there is a growing disposition on the part of the jobber to handle and push other lines which he can substitute for enameled iron." What other lines are referred to there?

A. Mr. Ahrens wrote the letter and he can tell you that.

Q. Well, what did you understand him to mean?

A. I supposed he referred to the vitreous ware.

Q. That is the solid procelain ware?

A. No, that is far higher in cost.

Q. Tell us what you understood these words to mean when you say vitreous ware?

A. There is a grade of lavatories made in what is known as vitreous ware, which some people claim is getting to affect the sale of enameled iron ware.

Q. That is made out of burnt clay, is it not?

A. You will have to ask the potters, because that is a trade affair.

Q. What do you understand it is made of?

A. I don't pretend to know. I don't understand just where the difference is between the porcelain and the vitreous.

Q. This vitreous ware to which you referred is in competition with sanitary enameled iron ware, as I understand it?

A. I think it is, from what I have heard of it, that is, from rumors. We have not found that it was in competition with our ware, but I think it is principally in the lavatories.

Q. But as to lavatories you understand that it does come into competition with your ware?

A. I have heard that statement made.

Q. I call your attention to Petitioner's Exhibit 149, which is a letter dated May 20, 1910, from Mr. Murphy to Mr. Ahrens? A. Yes, sir.

Q. He says there in respect to the prices at which you and the Standard Sanitary Company have been selling your goods, "it is possible that recently, in a few cases, we did quote and sell lower than your prices, but only in spots, and nothing of any consequence." Is that true?

THE WITNESS: Do you mean did we do it, or is Mr. Murphy's statement true?

Mr. NOBLE: Is that statement true?

A. Mr. Murphy is a truthful man.

Q. Is that statement true?

A. It is possible that we may have sold lower than them at times and they sold lower than us at times. 1

Q. I ask you is Mr. Murphy's statement true as here made? A. I assume that it is.

Q. You said to Mr. Grosvenor that the enameling powder was composed of several ingredients generally not made public? A. Yes, sir.

Q. I do not wish to inquire as to the proportion, but I want to know if you will tell me, what the ingredients of that powder are?

A. I don't think I should. There is a difference in the ingredients used at the different plants, and I don't think that I should be called upon here to state that fact. 2

Q. I don't insist if you do not care to go into it.

A. I think it is the property and business of our company, and I have always held so.

Q. What the ingredients are but not the percentages?

A. I mean the whole thing.

Mr. GROSVENOR: The whole thing is the powder that is used in the sieve.

THE WITNESS: Yes, when it is ready for use.

Q. As I understood you to say to counsel for the Government since 1890 or thereabouts what you call the dry process has been in use? 3

A. No, I think the dry process was in use before that in certain plants.

Q. Maybe it was in use in your plant at that time?

A. It was in use in our plant in the early 90's.

Q. And that is the plan which you say is generally in use now? A. Practically, yes, to my knowledge.

Q. And the plan generally in use is to heat the cast iron and to spread the powder over it?

A. To apply the powder in dry form on the heated article. 4

Q. That is the general process which you say is in use now? A. To my knowledge; yes, sir.

Q. And that has been in use since 1890 or thereabouts?

A. I think it was in use in some plants prior to that.

Q. You have to heat the cast iron to get this powder to adhere to it, do you not? A. Yes, sir; that is the plan.

Q. How hot is the cast iron when you take it out of the furnace, if you know?

A. I don't know the exact temperature.

Q. It is at a cherry red heat, is it not?

A. It is all of that?

Q. And it is between 1200 and 1500 degrees Fahrenheit, is it not? A. That is about right, yes.

Q. How important is it to get the powder on while the article is hot?

A. It is desirable to have it evenly distributed.

Q. And to get it evenly distributed you have to have the temperature of the iron high?

A. You can distribute it even if the temperature is not high, but it would not stay on.

Q. In order to have it fuse, do you know how hot the iron has to be?

A. It should be from twelve to fifteen hundred degrees; it has to be a bright red.

Q. And you have to be as quick about it as you can so that the temperature will not fall? A. Yes.

Q. That is an important element in the manufacture, to move it over quickly. A. It is a factor.

Q. Mr. Grosvenor showed you a sheet of paper having a lot of figures on it which you said was compiled by Mr. Kross, of your office; do you know when that was compiled?

A. In June, 1910.

Q. What part of June? A. The latter part.

Q. Was that compiled somewhere toward the end of June? A. Yes.

Q. Somewhere about June 28? A. Around that time.

Q. Did you send a letter to the Department of Justice or the Attorney-General on or about June 28, 1910?

A. The Government requested of us certain information and we gave it to them in writing. It was addressed to the Department of Justice, although it was called for by Mr. Darling.

Q. Was that the date of the letter, June 28?

A. I think it was, yes.

Q. Was this sheet about which I have just inquired compiled in connection with that letter sent to the Department of Justice? A. Yes.

Mr. Grosvenor: It was attached as one of the exhibits to that letter also prepared at the request of the Department.

Mr. NOBLE: As testified to by counsel for the Government. 1

Q. I now show you Petitioner's Exhibit No. 50 and ask you if that is on your letterhead, that is, your company's letterhead?

A. Why, yes; that is, it was a sheet that was used—yes, it is our paper but it is not our ordinary correspondence paper. It is one of the sheets used after the original.

Q. I called your attention to Exhibits 52-53-54-55-56-60-61-62-63 and ask you if they are also on your paper?

A. I assume that they are; this has no name on it (indicating) but it is the same class of paper that we are using. These are, because they have the names on them. 2

Q. Were those sent as part of your letter of June 28 to which you have referred? A. Yes, sir.

Q. On those exhibits there appear to be letters between E. L. Wayman and Mr. W. J. Kohler.

Mr. GROSVENOR: It is not *on* those exhibits, because it is the letters which are the exhibits.

BY Mr. NOBLE:

Q. Are those copies of letters addressed by Mr. Wayman to you and by you to Mr. Wayman? A. They are. 3

Q. And you furnished those to the Department of Justice at its request? A. On demand; yes, sir.

Q. Were you at that time subpœnaed to produce these letters and furnish them to them?

A. I was notified that the testimony was requested and would be given upon subpœna, and that a subpœna could be issued; that was my information.

Q. Who told you that?

Mr. GROSVENOR: Counsel for Government objects to this line of questioning as immaterial and irrelevant. 4

Mr. NOBLE: Who told you that?

A. I would have to look through the correspondence to find that out.

Q. Who told you that which caused you to furnish these letters because you were told a subpœna could be issued?

A. That is pretty hard to say without having a reference to it here.

Q. You said a moment ago Mr. Darling spoke to you. Was it Mr. Darling who stated that to you?

A. I don't know whether Mr. Darling stated that specifically, but about that time, the middle of June we received a telegram from Mr. Darling asking for certain information, and I was not at home at the time, so there was considerable telegraphing between Mr. Darling and our home office and myself. I could look that up.

Q. At the time you furnished these exhibits to the Government about June 28, 1910, you were not actually subpœnaed? A. No.

Q. In your letter of June 28, 1910, to the Government, or to the Attorney-General's office, did you give them the names of the various companies engaged in the enameled ware business and a history of those companies?

A. Yes, to the best of my knowledge.

Q. Did you write that letter or did you see it before it was sent? A. Yes, sir.

Q. Did you write it yourself?

A. Well, I dictated a large part of it.

Q. The letters which you copied into that letter and sent along as exhibits you got from your files? A. Yes, sir.

Q. And where are those letters now?

A. In the possession of the Government or its representatives.

Q. Now, previous to the telegram which you say was received from Mr. Darling, had you had any correspondence or communication by writing or orally with the Department of Justice or any of its representatives?

A. No, sir; not previous to this demand of Mr. Darling as representing the Government. That was the first intimation that we had.

Q. I show you a letter, Mr. Kohler, dated June 20, 1910, and addressed to Mr. Edwin L. Wayman, and signed J. M. Kohler Sons Company per Walter J. Kohler, and I ask you if that is your signature? A. It is.

Mr. NOBLE: I offer that letter in evidence as Defendant's Exhibit No. 2.

Letter referred to was then marked and filed as "Defendants' Exhibit No. 2."

Mr. NOBLE: I will read that letter:

"June 20th, '10. 1

"Mr. Edwin L. Wayman,
1509 Arrott Bldg.,
Pittsburg, Pa.

"Dear Sir:—

"We have yours of June 17th requesting return of correspondence between your office and ours, which you had forwarded to us, and regret to have to advise that this correspondence was promptly destroyed upon its receipt.

"We trust you have not been inconvenienced 2
thereby, and remain,

"Very truly yours,
"J. M. Kohler Sons Co.,
per Walter J. Kohler,
"WJK-W" Pres."

Q. Why did you tell Mr. Wayman that the correspondence which he returned to you and which you have just testified you furnished copies of to the Government, in your letter of June 28, and furnished to the Government now upon subpœna, was promptly destroyed upon its receipt? 3

Mr. GROSVENOR: I object to that question on the ground that counsel for the defendants has drawn an inference from the testimony of the witness which is not what the witness said. In other words, the witness did not say that he gave to counsel for the Government the correspondence which was returned by Wayman, and the question as read states that he so said.

A. The correspondence received from Wayman was brought in by Mr. Kroos, and as we had all the duplicates 4
of our letters to him and his originals to us, Mr. Kroos had instructions to immediately burn this Wayman correspondence which he had sent us, and in acknowledging Wayman's letter later on, which he asked for, I said that the correspondence between his office and ours had been destroyed. The correspondence which was in our files did not belong to Mr. Wayman, but to our company.

Q. Is that the best explanation which you can make of

the statements contained in your letter of June 20, 1910?

A. That is the statement.

Q. Is that the best explanation that you can make of the statements contained in your letter of June 20, 1910?

A. That is the statement.

Q. I ask you if that is the best explanation which you can make of the statements contained in your letter of June 20, 1910?

THE WITNESS: Will you read my answer?

The stenographer then read the answer to the 4th preceding cross-question.

THE WITNESS: That is my answer.

Q. Is that the best possible explanation you can make?

A. That is my answer.

Q. At the top of Petitioner's Exhibit No. 143 are some words in handwriting. I would like you to state whose handwriting that is? A. That is mine.

Mr. NOBLE: I offer the words written in there in handwriting as Defendants' Exhibit No. 3.

The ink writing contained upon Petitioner's Exhibit No. 143 was then marked and filed as "Defendants' Exhibit No. 3."

RE-DIRECT EXAMINATION BY Mr. GROSVENOR:

Q. I show you the original of the letter of June 17, to which counsel for defendants has just referred, and ask you if that is the letter of Mr. Wayman, a copy of which was just read.

Mr. NOBLE: I did not introduce Mr. Wayman's letter, but Mr. Kohler's letter.

Q. Well, is this the letter of Mr. Wayman your reply to which was introduced by counsel for defendants?

A. It is.

Mr. GROSVENOR: I will read that (reading):

"W-6171028-1

June 17th, 1910.

"Mr. W. J. Kohler,
c/o J. M. Kohler Sons Co.,
Sheboygan, Wis.

"Dear Sir:—

"Under date of June 6th, I returned to you your correspondence covering the period from Aug. 5th to June 1st. Will you be kind enough to return this to me at once?

"Thanking you in advance, I am

"Yours very truly,

"E. L. Wayman."

Mr. GROSVENOR: I offer that as Petitioner's Exhibit No. 152.

Letter of June 17th, 1910, addressed to W. J. Kohler and signed by E. L. Wayman was then marked and filed as "Petitioner's Exhibit No. 152."

Q. In your correspondence with Mr. Wayman you kept copies of your letters to him? A. Yes, sir.

Q. And you kept his originals and copies of your answers also?

A. Both were filed together; that is an office custom.

Q. He sent you his carbon copies of his letters to you?

A. And our originals.

Q. And your originals to him? A. Yes.

Q. Those are the papers you destroyed?

A. Those are the papers we destroyed. The package he returned to us we destroyed. We did not check up each letter to see if he retained any of them, but that was the package which we destroyed.

Q. I show you a lot of letters here, being carbon copies of letters addressed by your comany to Mr. Wayman, and original letters signed by Wayman and addressed to your company? A. Yes, sir.

Q. Are those papers some of the correspondence that you had with him?

A. That is part of the correspondence taken from this file.

Q. From the files of your office? A. Yes, sir.

Mr. GROSVENOR: I offer these as "Petitioner's Exhibit No. 153." Most of these letters have been offered in evidence, and I will not read them. Most of them are originals of the Kohler-Wayman correspondence which counsel has referred to in the cross examination of Mr. Kohler. I count eleven papers here.

Letters referred to were then marked and filed as "Petitioner's Exhibit No. 153."

Examination concluded and signing of deposition waived by agreement of counsel for the respective parties.

JOHN B. MURPHY, a witness heretofore produced and sworn, resumed the stand for continuation of direct examination and testified as follows.

DIRECT EXAMINATION BY Mr. GROSVENOR (Continuing):

Q. Mr. Murphy, you testified this morning that you are vice-president of the J. M. Kohler Sons Company?

A. Yes, sir.

Q. And have charge of the Chicago office? A. Yes, sir.

Q. Were you present at a meeting in May, 1910, at your office? A. Yes, sir.

Q. Who was present?

A. Mr. Ahrens, Mr. Torrance, Mr. Clifford, Mr. Kohler and myself.

Q. What was said, if anything, at that meeting with regard to a license agreement?

A. Why, there was considerable talk by Mr. Ahrens and also Mr. Torrance.

Q. What did Mr. Ahrens say?

A. He was very much in favor of it and used his efforts to have Mr. Kohler come in, and Mr. Torrance and Mr. Clifford also, but not as much as Mr. Ahrens. The meeting did not last over an hour or so, when Mr. Kohler said that he was not interested and would not go in, and we finally disbanded and went home.

Q. Was anything said about the legality or illegality of the proposition? A. Yes.

Q. Who said anything about it?

A. I think Mr. Torrance. 1

Q. What did he say?

A. That he understood it to be perfectly legal.

Q. What did Mr. Kohler say?

A. That he did not think so.

Q. Anything else said about it?

A. No, not that I remember.

Q. Was anything else discussed at this meeting of an hour other than the license agreement?

A. Well, license agreement and the resale prices, of course, in connection with it.

Q. I show you two letters; one is on the letterhead of 2
the Standard Sanitary Manufacturing Company and is dated May 18, 1910, and addressed to you as vice-president of the J. M. Kohler Sons Company, from Mr. Theodore Ahrens; and another is a carbon copy of a letter addressed to Mr. Theodore Ahrens and dated May 20, and is unsigned; is that letter from you and was it written by you?

A. Yes, sir.

Q. And did you receive this first letter (indicating)?

A. Yes, sir; I received this letter.

Mr. GROSVENOR: I offer these. One of them is
dated May 18, 1910, and I offer it as Petitioner's 3
Exhibit No. 154, and the other dated May 20, 1910, I offer as Petitioner's Exhibit No. 155.

Letters referred to were then marked and filed as "Petitioner's Exhibits Nos. 154 and 155" respectively.

Q. Will you look at these exhibits and find which is the answer to the letter which I have just introduced dated May 18 and numbered Petitioner's Exhibit No. 154?

A. This is it (indicating).

Q. That is, Petitioner's Exhibit No. 149 is the answer
to Petitioner's Exhibit No. 154? A. Yes. 4

Q. And Petitioner's Exhibit No. 155 is the answer to Petitioner's Exhibit 148? A. Yes, sir.

Mr. NOBLE: Counsel for defendants objects to the admission of the letter dated May 18 and known as Petitioner's Exhibit 154 on the grounds that it is incompetent, irrelevant and immaterial, being merely a letter between Mr. Ahrens and Mr.

Murphy and having no binding force and effect upon anybody except in so far as it may affect Mr. Ahrens.

Counsel for defendants likewise objects to the admission of the letter of May 20, 1910, addressed by Mr. Murphy to Mr. Theodore Ahrens, it being, as I understand it, an answer to Exhibit No. 148, as incompetent, irrelevant and immaterial, and as having nothing to do with any of the defendants, and as being irrelevant except as far is it may concern Mr. Ahrens personally.

Mr. GROSVENOR: I will read the letter of May 20th from Mr. Murphy, the vice-president of the J. M. Kohler Sons Company, to Mr. Ahrens. (Reading):

"May 20th, 1910.

"Mr. Theo. Ahrens, Pres.,
Standard Sanitary Mfg. Co.,
Pittsburgh, Pa.

"Dear Sir:—

"Acknowledging yours of the 18th, I have read with interest the copies of letters you enclose, and am returning them herewith. Inasmuch, however, as you do not sign the letter presume it was not read by you after inscription. We see no occasion for the final paragraph of your letter, stating that you wish to deny that you are a philanthropist, but you do say that the principal reason in endeavoring to consummate the resale price is because you want to put through some plan that would be to the interest of your customers, and that you are interested in the welfare of the people who sell your goods.

"You did state also, personally, that if the deal did not go through it would cost your shareholders $300,000 this year, as you would be obliged to lower prices.

"It therefore seems strange how you can reconcile both statements, and we will agree that you are not a philanthropist.

"Our position is, briefly: We will protect, as always, the jobber, and the people to whom we sell,

so long as it is to our mutual interest to do so. We will not, however, resort to any method that our attorney advises is in defiance of the law. We are not antagonistic to the resale plan, and our customers, as well as yourselves, know this. 1

"Yours very truly,

"J. M. Kohler Sons Co.,

Vice Prest."

No Cross Examination.

Examination concluded and signing of deposition waived by agreement of counsel for the respective parties. 2

JOHN L. SULLWOLD, a witness of competent age produced on behalf of the petitioner, being first duly sworn, testified as follows.

DIRECT EXAMINATION BY Mr. GROSVENOR:

Q. You are connected with what company?

A. President and secretary of the Western Supply Company of St. Paul, Minn.

Q. What is your business?

A. Jobbers of plumbers' supplies. 3

Q. Do they handle bathtubs and so forth? A. Yes, sir.

Q. Is your business confined to Minnesota?

A. No, sir; we sell in Wisconsin, Iowa, North and South Dakota and Montana.

Q. Do you appear here under subpœna? A. I do.

Q. And that subpœna was served in some detail upon you to produce certain papers, among others mentioned are the letters which were exchanged between you and Mr. Ahrens and Mr. Torrance. Have you produced those letters? A. Yes, sir.

Q. I hand you the papers which you have produced today and ask you to pick out the letters of Mr. Ahrens and Mr. Torrance? A. Here they are. 4

Mr. GROSVENOR: Among the letters you hand me is one dated July 11, addressed to you as president of the Western Supply Company, St. Paul, and signed Theodore Ahrens, President. I offer that letter as "Petitioner's Exhibit No. 156."

1 Letter referred to was then marked and filed as "Petitioner's Exhibit No. 156."

Q. You have produced a carbon copy of a letter dated July 13 and addressed to Mr. Theodore Ahrens and signed by the Western Supply Company. Is that a reply to the last letter? A. Yes, sir.

Mr. GROSVENOR: I offer that in evidence as "Petitioner's Exhibit No. 157."

Letter referred to was then marked and filed as "Petitioner's Exhibit No. 157."

2 Q. You have produced a copy of a telegram dated July 5, 1910, and addressed to Mr. E. L. Wayman and signed by you. Did you send that telegram? A. Yes, sir.

Mr. GROSVENOR: I offer that in evidence as "Petitioner's Exhibit No. 158."

Letter referred to was then marked and filed as "Petitioner's Exhibit No. 158."

Mr. GROSVENOR: I offer in evidence also the letter from Mr. Ahrens dated July 18, 1910, and addressed to John L. Sullwold, care of the Western Supply
3 Company, as "Petitioner's Exhibit No. 159."

Mr. NOBLE: Counsel for defendants objects to the introduction of Petitioner's Exhibit 156 on the ground that it is incompetent, irrelevant and immaterial, and does not refer to any of the defendants. in this case and does not involve any one save Mr. Theodore Ahrens, if it is material as to him, no conspiracy having been proven.

Counsel makes the same objection to Petitioner's Exhibit No. 157 purporting to be addressed by the Western Supply Company to Mr. Ahrens, as incom-
4 petent, irrelevant and immaterial as to any of these defendants.

Counsel makes the same objection to "Petitioner's Exhibit No. 159," which purports to be a letter written by Mr. Theodore Ahrens to Mr. John L. Sullwold.

Mr. GROSVENOR: I will now read Petitioner's Exhibit No. 156:

"Louisville, Ky., July 11, 1910. 1

"John Sullwold, President,
Western Supply Co.,
St. Paul, Minn.

"My dear John:—

"I am very sorry that I did not have a chance to meet you again on the day following our strenuous experience in Chicago."

Q. To what does he refer there?

A. There were a number of jobbers here from the Pacific Coast and we were busy that day in talking to those people, and one part of that was the bar part of it. 2

Mr. GROSVENOR: The letter continues:

"I counted on seeing you without fail, but was kept very busy all day with the California delegation, and could not locate you.

"Mr. Wayman has not advised me whether he finally convinced you that it was to your interest to sign the contract with us and come in. I hope you have done so. We will certainly all feel it very keenly if you oppose us in this matter. 3

"On the day that I left Chicago we had secured signatures from 333 jobbers out of a total of less than 370, giving us fully 90% of the jobbers and more than 90% of the purchasing power. It was reported to us that early last spring you went on record in a communication to Merkel Bros., stating that you were in favor of the resale plan, and would use your best efforts with the manufacturers to have them put out such a plan. I certainly hope that you will not desert us.

"Awaiting your reply, which I trust will be favorable, I am, 4

"Very truly yours,

"Theo. Ahrens,
President."

"A."

"I enclose tab on the evening's entertainment."

Petitioner's Exhibit No. 157, reads as follows:

"July 13, 1910.

"Mr. Theo. Ahrens, Prest.,
Standard Sanitary Mfg. Co.,
Louisville, Ky.

"Dear Sir:—

"Replying to yours of the 11th beg to say I am also sorry I did not see you again; but from the attitude taken by your company in our correspondence and from the way they treated our Company in not advising us in any way about what they proposed to do in this resale plan, not protecting us in any way as I understand they did their favored customers, and from conference had with Mr. Wayman I was very much in doubt whether you wanted to see me again about this matter.

"Yes, I did write Mr. Merkel that I was in favor of a resale plan on enameled ware and I am now in favor of a legitimate resale plan on enameled ware. To my mind the present plan is not legitimate, but is purely a hold-up scheme to make Mr. Wayman thirty or forty thousand dollars per year and several millions for men who are already rich, and also putting on their feet a number of smaller enameled ware manufacturers who were anxious to get into the enameled ware business, but who could not stand alone and meet the competition of the larger and older manufacturers of this commodity, and also to put on their feet a lot of men in the jobbing business who wanted all the trade and made prices to crowd out their competitors and did not know enough to run a jobbing business, and by so doing they were putting themselves out of business

* * *

"The present resale scheme will build up the fellow who cannot produce enameled ware as cheaply as your company can and in a year or two there will be from ten to twenty more enameled ware manufacturers in the country. Your patents are only a subterfuge and are not essential in the manufacture of enameled ware. Any one can go into the business. The resale plan will go to pot and

the jobber will be worse off than ever. You may not care, as you have money enough and may want to get out from under before the trouble comes and you may feel— 'To h—— with the public,' as the old saying is. Why not be fair in this matter and not make it harder for the future generation than you can help? * * * 1

"While in Chicago I heard a Pacific Coast jobber say he did not care what the manufacturers did as long as he could make a good profit. This man failed in Minneapolis about eighteen years ago.

"Now, why the advance in enameled ware at this time, when all other commodities are on a decline or hanging on by their eyelashes to maintain present prices, excepting possibly a slight advance to pay the expenses of a man, printing, postage, etc.? 2

"As to the treatment we received, I was in Chicago twice in May and tried to get a line on what was proposed, but could get no information. I inquired if there would be an advance in price. Was told there would not. I was not consulted at all as to how we would like this deal. Now, I find that the Crane Co. were in conference several times during this period, they acquiesced in this scheme, adopted the resale plan and can sell any ware they wish to without any restrictions, they knowing what was going to happen, advised their trade, got in and covered. The United States Supply Co., a would be jobber of this city, who handles the U. S. Sanitary Mfg. Co.'s goods, I find also went around to the trade prior to June 1st and filled up every one who would buy from them at old prices. I am also advised that other favored customers of yours were protected and were advised that an advance would take place so that they could cover. Your company took our good hard money for twenty years but you never advised us. Last spring, after a conference with you and Mr. Torrance in Chicago I bought five hundred tubs from you and paid you forty cents apiece more for them than I could buy an equally first class tub for, made by a reliable manufacturer. On this one order our Company paid you two hundred dollars more, to be loyal to you; 3 4

not I presume because we bought a lot of Kohler ware every year that we were practically compelled to introduce into this market, after offering the business to the Standard Sanitary Mfg. Co., who turned it down with the statement that they were not in a position to take on any more customers on small ware at that time and that they were already oversold, you did not count on us as one of your loyal customers. Why should the Crane Co. enjoy, just because they are large buyers, privileges that are not granted us? The first thing we knew about the whole plan was when we received from the different manufacturers a letter advising us to sign a resale plan and that unless we did we could get no more goods. I wrote Mr. Wayman for permission to sell Kohler ware as provided for in the agreement and was refused point blank.

"Paragraph 10 in the resale agreement is coercive, non-American, unjust and, we belive, illegal, denying us our individual rights.

"Since my conference with Mr. Wayman in Chicago he wrote, granting permission to sell Kohler ware *until further notice*. Which might be withdrawn within twenty-four hours after he had our signature. This proposition is an insult to any one with ordinary intelligence and I told him so.

"Now, I am not setting myself up as a socialist or a modern reformer, or a man with better judgment than the men who signed this agreement. Our company has always and do now believe in making a reasonable profit on everything that we sell and are also willing that the manufacturers should have a reasonable profit. In fact, our policy has always been never to sell goods or let them leave our store unless there was a reasonable profit in the sale. We, as you know, started small twenty years ago and if we had not done business along these lines we would not have the monument to show for our labors that we have today; but, using Theo. Roosevelt's favorite term 'We want a square deal to all and are in favor of a square deal to all.'

"We are going to run our own business, we absolutely refuse to sign the resale plan as now out-

lined, come what may. We realize that this will 1
cost us some money and annoyance. We have in the printers' hands at the present time six thousand dollars worth of plumbing specialty catalogues, illustrating a great many of the Standard Sanitary Mfg. Co.'s specialties. We are holding this up. We do not know what list to use and further, before we are coerced into signing away what we believe to be our rights, we will not illustrate the goods at all and cut them out entirely. We realize and appreciate fully that the Standard Sanitary Mfg. Co. can get along very nicely without us, but we are also 2
egotistical enough to believe that we can also remain in business without them.

"As already advised Mr. Wayman, we will now use all honorable methods to break up this, as we believe, illegal combination.

"I regret very much indeed that there is this difference in our opinion. I want to thank you personally and also the other members of your company and your employes, whom I have known for many years, for the courtesies that I have received at their hands. There is nothing that has come up in 3
our business in years that I have given so much careful consideration. Have not acted in haste. I have conferred very seriously with my partner, Mr. Bettingen and am acting in absolute good faith, taking the stand which I believe to be right and just.

"Yours very truly,
"Western Supply Co.,
"dict.J.L.S." Per J. L. Sullwold."

Mr. NOBLE: Counsel for defendant moves that the contents of the letter of July 13, 1910, known as 4
"Petitioner's Exhibit No. 157" be stricken out as having no bearing on this case and as expressing the views only of the writer, Mr. Sullwold, and as having no relevancy, competency or materiality to any of the defendants in this case or to any of the issues involved.

Mr. GROSVENOR: Petitioner's Exhibit No. 158 reads as follows:

1

"July 5, 1910. Paid.

"E. L. Wayman,
c/o La Salle Hotel,
Chicago, Ill.

"Will meet you La Salle Hotel three o'clock tomorrow afternoon.

J. L. Sullwold."

Petitioner's Exhibit No. 159 is a letter from Mr. Ahrens to Mr. Sullwold, and reads as follows:

"Louisville, Ky., July 18, 1910.

2

Mr. John H. Sullwold,
c/o The Western Suply Co.,
St. Paul, Minn.

"My dear Sullwold:

"Your letter of July 13th reads as if the argument made by Mr. Fowle before the Stratford Hotel bar and other bars in Chicago, really produced an impression on you. Let me say to you that it is unfair in the extreme, and what is worse, you make statements that you cannot substantiate, but I want

3

to answer it, not because I believe I can influence your opinion, but because I cannot allow such misstatements as you make to go unchallenged. Personally, so far as I am concerned, I do not care whether you sign up or not. This is personal.

"Your first argument that we are injuring ourselves, and building up our competitors, is advice that we do not need. Like you, we claim the right to run our own business, and to decide what is good for us.

"Your second point that the resale plan is not a

4

good thing for the legitimate jobber, is answered by the fact that within thirty days after the jobbers' contracts were sent out, 90% of the legitimate jobbers of the United States had signed and returned them.

"You say our patents are only a subterfuge. How do you know that? What right have you to call these patents a subterfuge? You do not know what you are talking about when you say this. Neither

does your informant, even if it is Walter Kohler, 1
or J. B. Murphy. * * *

"You ask why an advance should be made at this time. In reply we can say that our prices under the resale plan are no higher than they were before June 1st, with the exception of the Missouri River territory, where we have heretofore paid excessive freight allowance, and where we have now equalized so that our product will give us the same return in that territory as in the rest of the United States. Our prices in New York City, Philadelphia, Boston, Chicago, Pittsburgh, Cleveland, Louisville, and in 2
fact through the entire East and Central section of the country are as low as they were before the resale plan went into effect. It happens that in your particular territory they are slightly higher.

"Your complaints that the Standard Sanitary Mfg. Co. has not given you proper treatment; that you were not given opportunity to cover yourself before June 1st and that you were not consulted with regard to the resale plans, are all unfounded.

"I have just talked to Mr. Verity on the long distance; called him up especially to find out whether he 3
had offered to take care of you before June 1st. He advised me that he called on you about May 20th, and that you told him you were not in need of anything, as you had a good stock on hand and did not want to buy any more. We have at all times been willing and anxious to serve you to the best of our ability and to give you the best we had in the shop, both as to service and price.

"I believe we have done so. It is true that we conferred with the Crane Co. on this plan. It is also true that we did not take it up with you direct. 4
Our reason for not taking it up with you direct is because we were advised that you were heartily in favor of the resale plan, and so expressed yourself both in writing and verbally. It was necessary for us to take it up with the Crane Co. on account of their prominence, and the fact that they are the largest distributors of Enameled Iron Ware in the United States. It was not possible for us to take it

1 up with all our good friends, as much as we would have liked to do so, as it was a physical impossibility to do this.

"I understand that you are sending out a copy of Kohler's letter to the trade, and are advising your customers that you are opposed to us. You say in your letter to me that paragraph 10 of the resale agreement is coercion, un-American, unjust, and you believe is illegal, as it denies you your individual rights.

"Let me ask you why we should not have the same
2 rights to refuse to sell our goods to someone as Kohler has, and as he is now doing? Right next door to you in Minneapolis, the Crane Branch has the exclusive sale of Kohler goods, and Kohler has repeatedly turned down orders for his enameled ware sent in by the Central Supply Co. Try it yourself and see whether he will fill the orders for you, yet you blame us for now doing the very thing your friend Kohler has been doing for several years.

"Now I am very sorry indeed to receive this letter from you. Personally, I do not care whether you
3 sign or not. I know that you can get along without us just as well as we can get along without you, but I do not like the idea of an old friend and customer like you telling me that we are a lot of highbinders and pirates. That sort of talk might do all right when we are doing Chicago, and ordering up just one more about every five minutes, but it is not fair to us when you really sit down in your office and in sober earnest write us such a letter. The Standard Sanitary Mfg. Co. has always, and is now doing a clean, honest and legitimate business, and we take no back seat as against your concern, or any other.

4 "I want to add that I hope this difference of opinion between us on a business matter will not cause any break in our personal relation. I am coming up to see you this summer, and I will promise not to talk resale agreements, or to ask you for any of your business. You can run your business just as you please, and we will do the same, but I hope before another 12 months rolls around that we

can convince you by the actual facts of the case that the position you have taken is all wrong. 1

"Yours very truly,

Theo. Ahrens,

"A. President.

"P. S. In dictating this letter, I forgot to say that resale prices are not an unusual thing. No doubt your are maintaining them on some items that you sell. Wrought Pipe, for instance, Penberthy injectors. In other lines of business they are quite common and cover many of the things that you eat, drink, wear and use, such as, for instance, Ivory Soap, Winchester Cartridges, Breakfast Food, etc., etc." 2

BY MR. GROSVENOR:

Q. With reference to Petitioner's Exhibit No. 158, had you received any communication asking you to be there?

A. I think I did, but I could not find that.

Q. Did you go to Chicago? A. Yes, sir.

Q. Did you meet Mr. Wayman? A. Yes, sir.

Q. Did he ask you to sign an agreement? A. Yes, sir.

Q. Did you do so? A. No, sir. 3

MR. GROSVENOR: This letter (indicating) is dated June 13, 1910, and is addressed to Mr. F. J. Torrance. I offer that as "Petitioner's Exhibit No. 160."

Letter referred to was then marked and filed as "Petitioner's Exhibit No. 160."

MR. GROSVENOR: That letter reads as follows:

"June 13, 1910.

"Mr. Francis J. Torrance,
c/o Standard Sanitary Mfg. Co.,
Pittsburgh, Pa. 4

"Dear Sir:—

"The resale price as outlined does not look very good to me. We have, as you know, been handling the Kohler small ware, have same illustrated in our catalogue and have quite a large stock of them on hand. I have written Mr. Wayman for permission to continue to handle this ware. This he has refused.

The Kohler people do not seem inclined to go into this arrangement.

"While we expressed ourselves several months ago, when approached on the resale proposition, as being in favor of a resale plan, we find that the plan now proposed is working an injury on us, as under the proposed arrangement we will make a smaller profit on enameled ware, outside of the two year guarantee tubs, on which the profit would remain about the same. By this plan the manufacturers propose to increase their profits materially at the expense of the jobber who has had business ability enough to get a fair profit on the goods he sold. As the writer sees it, this emanates from the eastern jobber who did not know enough to get a reasonable return on merchandise sold; but knifed each other to the extent that they found they were not making any money. Now they want to pull in all the jobbers in the United States in this arrangement, which is unfair to us.

"I am not adverse at any time that a manufacturer should increase his profits to get fair returns on money invested providing he does not do it at our expense.

"I am not at all sure that the resale price on enameled ware and quite a number of other commodities is a permanent good thing for either the manufacturer or the jobber. It seems to me it only lets down the bars for both manufacturer and jobber to invite more competition, which is very difficult to exterminate when once established. This has been demonstrated by some of the largest concerns in the country, who have built up competition by holding their prices on their products above normal and afterwards, when they found the damage they had done, they dropped their prices materially. A year ago last February the National Tube Co. lowered their price ten dollars per ton on pipe. A year ago last January the American Radiator Co. lowered their price on house heating boilers 20% and on radiators 10%. Several years ago the earthenware manufacturers did the same thing. The enameled ware manufacturers also did this same thing, with the result

that they were all holding the umbrella so that others could get into the game and I am of the opinion that if a resale price were to be established on a majority of the commodities we sell that we would have one hundred and fifty new jobbers in the United States in the next twelve months besides numerous new manufacturers. 1

"The hardware jobbers today are endeavoring to sell everything from a tenpenny nail to a gold watch. They are very anxious to get into the plumbing supply business, particularly in the west. The Marshall-Wells Hardware Co. of Duluth have declared to one of our friends within a week that they now have practically a complete line of plumbing supplies and that they propose to go into this business so that they can supply the hardware men throughout the country, whom they sell, with plumbing goods. This would mean that every general store in the small towns that carries a small line of hardware, as they usually do, would be able to purchase plumbing goods, to be put in by a blacksmith or a tinsmith. This will work an injury to every jobber and every legitimate retailer in plumbing supplies. 2 The prices are fixed so that it will encourage new manufacturers in plumbing supplies. 3 There will undoubtedly be an overproduction; these manufacturers will want to dispose of their products and the hardware jobber will have no trouble in getting into this business. Up to date the hardware jobber has been fairly controlled and it seems to me that it would simply force the legitimate jobber of plumbing supplies today, who have the capital to carry out the plan, to market his product on the Sears-Roebuck plan—to sell to any one who has the price. If this was carried out it would upset the whole jobbing business as well as to decrease the earning power of the largest manufacturers now in business and it would mean a total demoralization of the whole plumbing supply proposition. 4 I am therefore not in favor of a resale plan on enameled ware as outlined.

"I do not like to be arbitrary or be contrary to bettering the conditions; but I do not think it is

justice that our Company should be called on to pay the expense of the jobber or jobbing community who do not know how to carry on a legitimate jobbing business.

"Would be pleased to have a line from you.

"Yours very truly,

Western Supply Co.,

"dict. J.L.S. Per J. L. Sullwold."

Mr. GROSVENOR: The next is a letter dated June 16, 1910, and addressed to Mr. Sullwold by Mr. Torrance. I offer that as "Petitioner's Exhibit No. 161."

Letter referred to was then marked and filed as "Petitioner's Exhibit No. 161."

Mr. GROSVENOR: That letter reads as follows:

"Pittsburgh, U. S. A., June 16, 1910.

"Mr. J. L. Sullwold,
Western Supply Co.
St. Paul, Minn.

"My dear John,

"I was greatly disappointed at not seeing you at Toledo yesterday. I went there more to see you than any other one person and as I say, was greatly disappointed.

"I explained as well as I could the conditions to Mr. Frye. I want to say to you, Friend Sullwold, that we went into this proposition at the request, if not the behest of the jobbers, and if it is not to their liking, it will be a great disappointment to me. I am sorry I ever heard of the scheme because it does not seem to be appreciated by all of the jobbers and it should be. My argument is simply this:

"The resale agreement is the only legal remedy that can or may be applied to better conditions as they exist in the larger majority of jobbing centers. The opinions expressed in the meetings yesterday are just those as previously expressed to us individually and collectively. Where the conditions are bad, and that's pretty general, they want the resale proposition but it seems they want the other fellow to have it and the particular party in question wants to be allowed to do as he pleased. This, of course, we

can't do. If the resale scheme for iron pipe is a good one and has made, as generally expressed, a profit for the jobber, then why is not a similar scheme for enameled iron, particularly so when it is along such lines (and we believe it so to be) as will not meet with opposition on the part of the Courts. The whole thing seems to be a mystery as well as a disappointment. 1

"Here is a proposition which assures the jobber of a profit and assures him a steady and continuous market so far as profit is concerned, permits him to know almost to a certainty what his neighbor's goods are costing him and therefore what his competition is based upon, the profit being the same for each, excepting in the case of the smaller jobber who does not buy a sufficient quantity to obtain a preferential or quantity discount, and which extra discount we believe the larger buyer is entitled to, although on this score, men like Doctors, differ. 2

"I have worked for eight weeks very strenuously on this matter, not only at the risk of my personal comfort but even of my health because it has taken my time from my own regular line of work, compelling me to do this regular work afterwards and make up for it and to find now that it is spent on a cause that is, to a degree, distasteful and obnoxious to the very people who will be benefited by it and to find *any* opposition is rather a surprise to us. 3

"I have only to say that we have over one hundred sixty (160) jobbers who have registered with us. I do not know how many have registered with the other manufacturers, parties to the agreements. The names cover from the Atlantic to the Pacific; with the exception of one customer in New England, all the trade there have signed up. This one has a particular reason but I think will come in. 4

"Yours very truly,

"Fran. J. Torrance,

"FJT" V. P."

Q. The next is a letter of June 21, 1910, addressed to Mr. Torrance, of the Standard Sanitary Manufacturing Company, Pittsburgh, Pa. Was that letter written by you?

A. Yes, sir.

Mr. GROSVENOR: I offer that as Petitioner's Exhibit No. 162.

Letter referred to was then marked and filed as "Petitioner's Exhibit No. 162."

Mr. GROSVENOR: That letter reads as follows:

"June 21, 1910.

"Mr. Francis J. Torrance,
Standard Sanitary Mfg. Co.,
Pittsburgh, Pa.

"My dear Torrance:

"I have yours of the 16th and note contents carefully. I assume that you did not receive my letter of the 13th, in which I tried to explain fully my feeling in the matter.

"I have been in the plumbing supply business ever since I was sixteen years old, I have been at the head of this Company for twenty years, I have been fairly successful and I trust without getting what is commonly called—the swelled head. I attribute the success of this Company to two things. Our policy from the very start was never to let any goods go out from our store unless we received a reasonable profit in return regardless of what our competitors were doing and, as you know, our big competitors in this market did not give us the glad hand or welcome to our city. The other was—good, honest hard work. I can therefore state from actual experience that any one going into any line of business that applies these two principles to his business cannot help but be successful.

"The present resale plan on enameled ware would cost our Company quite a little sum of money annually besides throwing down the bars to invite competition both for the manufacturer and ourselves.

"You refer to the resale scheme on iron pipe. This scheme is on an entirely different basis. A year ago last February the National Tube Co., after holding their prices above normal for a number of years, woke up suddenly and found they had built up some good stiff competition that was cutting into their

tonnage. They immediately took steps in their own 1
organization, without consulting any one, to cut the price ten dollars per ton. This cut cost the jobbers that had a stock of pipe on hand, I would estimate two hundred thousand dollars. In order to reimburse the jobber in a measure for this they promulgated a resale plan and intimated to the independent mills that if the price to the jobber on the resale plan would not be maintained that they (the National Tube Co.) would cut the price again. They did not go to the jobber however and tell him that he must confine his sales to certain manufacturers 2
as has been done in the enameled ware scheme.

"Now friend Torrance, just a word as to our relations with you. Ever since we have been in business, 95% of the bath tubs we have handled have been of your make and quite a little small ware. We have a copy of a letter on file here which I wrote you several years ago, in which I told you frankly that it was my desire to purchase all our enameled ware from your Company and asked you what you could do for us. You replied that we had your regular discount sheet and the prices therein were the best you had. You stated further that as to 3
small enameled ware you were already oversold and that you thought it best to advise us frankly as to your conditions and that you could not take us on at that time on our small enameled ware requirements. There was nothing left for us to do except to make arrangements for small enameled ware with another company and we decided on the Kohler goods. That ware up to that time we had handled only in a small way. This concern were progressive, they made good ware, made lots of it and they supplied us with our requirements with the result that we 4
established a large trade on Kohler small enameled ware throughout the northwest, which we still enjoy, and we have same illustrated in our catalogues and you know they cost money. Now Mr. Wayman tells us that we must cease buying Kohler ware, destroy our catalogues or the licensed manufacturers will not sell us. One of the licensed manufacturers has al-

1 ready refused to ship us goods until we sign the agreement.

"Another feature that I cannot understand is how the Crane Co. can sell Kohler ware in their Minneapolis store, Standard Sanitary Mfg. Co.'s ware in their St. Paul store, and both in their Aberdeen, Fargo and Duluth branches. Some of these things have got to be made clear to me before I can be railroaded into a scheme, which, as I see it now, is going to cost The Western Supply Co. several thousand dollars a year in loss of profits, and increase
2 the manufacturers' profit materially for the time being only, as I feel confident that with the prices asked for by the manufacturers at this time, when there is no advance on any other commodity in this line, it will only build up competition for the manufacturer as well as for the jobber, as there is no combination on earth that can beat the man that will work hard and market his goods at a profit. It is impossible for the largest manufacturer in the country to compete with him or put him out of business except at a great loss to themselves.

3 "Again, we find that the United States Supply Co. of this city, who should not be recognized as jobbers at all, but as brokers, are handling the United States Sanitary Mfg. Co.'s line and their salesman informed one of our men today that they had no instructions as to maintaining a resale price.

"I regret very much that I was not able to attend the C. S. A. meeting at Toledo, as we had our annual stockholders' meeting on the 14th of this month. We had matters of importance coming up at this meeting and it was impossible for me to get
4 away. Again, it works quite a hardship on us to attend a meeting east of Chicago as it practically requires a week to attend these meetings.

"I am sorry that our opinions differ in regard to the resale plan as now outlined and I have decided not to sign this resale plan and, as I understand it, you will not ship us any more goods until this agreement is signed. Our Company will therefore fight this out to the best of our ability.

"Beg to assure you there is no personal feeling in this matter at all. It is simply a clear case of where I feel that our pocket-book is being legislated against by people who are living in your territory where the conditions are entirely different from what they are here and I do not see why we should be called upon to pay for their folly. On the whole I feel that this scheme was railroaded through in altogether too much of a hurry and the jobbers who have ruined their own business through their own folly were ready to take anything and urged the manufacturers strongly to adopt this scheme. 1 2

"Yours very truly,

"Western Supply Co.,

"dict.J.L.S." Per J. L. Sullwold."

Q. The next is a letter addressed to you by Mr. Torrance under date of June 23, 1910. Did you receive that?

A. Yes, sir.

Mr. GROSVENOR: I offer that as "Petitioner's Exhibit No. 163."

The letter referred to was then marked and filed as "Petitioner's Exhibit No. 163."

Mr. GROSVENOR: That letter reads: 3

"Pittsburgh, U. S. A., June 23, 1910.

"Mr. John L. Sullwold, Prest.,
Western Supply Co.,
St. Paul, Minn.

"My dear John,

"I am obliged by your letter of the 21st but am not sure that the contents are equally good for both of us. I think you would be better to go along with us in this matter because the paramount object in it is for the benefit of the jobber, not the manufacturer. The only real gain that the manufacturer has to hope for is the increased sale and use of enameled iron instead of some other materials. 4

"Your experience, owing to territorial conditions, may be different from that of other jobbers and it certainly is, taking your statements at their face and we have no desire or reason to take them other

[illegible] All over the country we have been hearing that enameled ware was profitless to the jobber and that there was more money in solid porcelain, [illegible] china and other goods which might be readily substituted both to the satisfaction of the consumer and the advantage of the jobber. We went into the scheme for that reason alone, i. e., to make our goods profitable to those who handle them. We have no ulterior motive whatever.

As to the legality of the scheme, we have no doubt, else we would not have gone into it. We may be mistaken in this and time alone will prove it.

As to Kohler's attitude in the matter, this is simply his own stubborn ideas in the matter. He is standing out against the wishes of, to the best of our knowledge, at least 75% of his customers and so hurt you by preventing their making a proper and reasonable profit on their goods.

As the matter you speak of as to our small ware, would say it is many years since we were able to [illegible] of you on small ware and the recent [illegible] given by you for purchasing small ware from Kohler was simply that you could get from Sheboygan mixed cars which you could not get from us. How correct this is, I am not just sure of at the present time but I can't just understand how, under the Inter-State Commerce, you could get anything different from Sheboygan than you could get from Pittsburgh or New Brighton. If it is a good thing for one concern, it ought to be for all. I can't see it in any other light unless it would be the selfish position which some manufacturer might temporarily occupy to the disadvantage of his competitor or neighbor.

Let me ask you, do you not handle any goods on a resale agreement. I understand you do but I may be misinformed. Let me also ask you if the resale [illegible] has not been a profitable one. While you make some criticism about the method of its establishment and we have no objection to your arguments whatever, you do not say that it has not been profitable and I assume, as you do not say to the

contrary, you are a party to it and are working under it. 1

"The reference you make on the second page of your letter in which you advert to our (at least, I so take it) going to the jobber and telling him what he must do, you must bear in mind that all this is predicated on certain patents, the validity of which have been established by the United States Courts in New York, Chicago and Pittsburgh. There has been no desire on the part of those prompting this scheme to shut out anybody, either manufacturer or jobber; in fact, all manufacturers were invited, urged and coaxed to come in. In fact, there has been no attempt whatever to shut any one out. The policy has been positively and energetically to the contrary. 2

"I hope you will think the matter over and come along because we would like to continue our very pleasant relations with you.

"Yours very truly,

"FJT" "Francis J. Torrance."

Q. And the next is a letter dated June 27, 1910, and addressed to Mr. Torrance by you. Did you write that letter? A. Yes. 3

Mr. GROSVENOR: I offer that letter as "Petitioner's Exhibit No. 164."

Letter referred to was then marked and filed as "Petitioner's Exhibit No. 164."

Mr. GROSVENOR: That letter reads as follows:

"June 27, 1910.

"Mr. Francis J. Torrance,
c/o Standard Sanitary Mfg. Co.,
Pittsburgh, Pa.

4

"My dear Torrance:—

"Note yours of the 23rd and I am satisfied beyond a doubt that your ideas and mine do not agree. I am going to answer a few of your questions and remarks.

"You state that the reasons given by us for purchasing small ware from Kohler were simply that we could get from Sheboygan mixed cars which we

could not get from you. You are surely in error about this as we could not make this statement and make it truthfully, as Kohler cannot ship combination cars of small ware from Sheboygan to St. Paul or any other western point. This is a privilege however that the Interstate Commerce Commission has allowed you to enjoy. We have been able to purchase of you and could today, if you were willing to sell us, mixed carloads of enameled ware shipped to St. Paul and shipped west from here; or in other words, we could ship direct to our customers mixed carloads of enameled ware from any of your plants. Where you got this idea we are at a loss to understand.

"You ask 'Do you handle any goods on a resale agreement?' Replying to same I will say 'No sir'! We are however today selling two commodities on a resale price established by the manufacturers. One is wrought pipe; the other is Penberthy injectors. These people do not say to us, however, 'If you want to enjoy this resale price we want to advance our selling price to you, you must confine your purchases to certain manufacturers or we will not sell you, and you must be satisfied with a smaller profit than you are now getting, because certain jobbers in the east are not enjoying the profits that you are making and they are satisfied with our plan; why should not you be?' I have paid my respects to the business methods of some of the eastern jobbers in my former letter and I do not see why we should be called upon to pay good hard earned money for the follies of others.

"I want to say right here that I am in favor of a resale plan that is legal, a resale plan that is just and fair to every one, that will net a reasonable return to the manufacturer and a reasonable return to the jobber. Every laborer is entitled to his hire, every capitalist is entitled to a legitimate fair return on his capital, every manufacturer is entitled to a fair return on the goods he produces and in addition to this he is entitled to a reasonable return for the hazard there are in his business. I am absolutely

opposed to any combination of manufacturers, jobbers or any one else to bleed the public. I never have been a party to any combination of this kind and never will be, even though it be legalized. By this I mean that neither manufacturer or jobber has any right to exorbitant profits. It never has and never will end well. I am not in favor of the resale plan adopted by the enameled ware manufacturers as you now have it and will not become a party to same. 1

"Reading between the lines in your letter I now understand that you do not want any of our orders unless we sign your license agreement. Kindly advise us if this is true so that we may not lose our own time and take up yours by sending you these orders only to be returned and so that we may advise our customers that our Company is not in a position to furnish licensed enameled ware. 2

"Yours very truly,

"Western Supply Co.,

"dict.J.L.S. Per J. L. Sullwold."

Q. And the next is a letter addressed to Mr. Myler and dated June 10, 1910, and signed by you. Did you send that letter? A. Yes, sir. 3

Q. Was that in reply to a letter received from him?

A. Yes, but I don't think that the letter received had any bearing on the matter, and I referred to the resale plan.

Mr. GROSVENOR: I offer that letter as "Petitioner's Exhibit No. 165."

Letter referred to was then marked and filed as "Petitioner's Exhibit No. 165."

Mr. GROSVENOR: That letter reads as follows:

"June 10, 1910. 4

"Mr. W. A. Myler,
c/o Standard Sanitary Mfg. Co.,
Pittsburgh, Pa.

"Dear Sir:—

"I have your recent letter withdrawing preferential discounts. We also have resale proposition submitted to us.

"As far as our Company is concerned, I can see where the resale plan submitted is increasing your income materially, as, if I understand the plan correctly, it increases the cost to us materially. The proposed resale price is considerably less than we are now getting. In other words, the profit on the resale plan to us is less. We have always been able in this market to maintain a selling price that netted us a fair return on our investment and, as I see the situation now, it seems that just because a lot of the eastern jobbers were not able to maintain a respectable selling price on their product they have appealed to the manufacturers to help them out by adopting a resale plan at our expense. On everything excepting the two year guarantee tubs we are getting a better price than the resale plan will give us and on the tubs in question we have been getting at least as much profit, if not a little more; so you can naturally see that this plan does not appeal to me at all for the simple reason, while I am not adverse to increasing your percentage of profit, that it is cutting down our profit on enameled were materially, which, if adopted, will cost us a good deal of money at the end of the year.

"Yours very truly,

"Western Supply Co.,

"dict.J.L.S. Per J. L. Sullwold."

Mr. NOBLE: I offer the same objections to the receipt of these letters as I offered to the letters between Mr. Sullwold and Mr. Ahrens.

Mr. GROSVENOR: The witness hands me a batch of papers which I will offer in evidence. One is a letter of June 4, 1910, from the Standard Sanitary Manufacturing Company to the Western Supply Company and signed by Mr. Torrance and states: "It is necessary for you to execute these contracts before we can sell you licensed sanitary enameled ware." I offer that letter as "Petitioner's Exhibit No. 166."

The letter referred to was then marked and filed as "Petitioner's Exhibit No. 166."

Q. Was this jobber's license agreement enclosed?

A. Attached to it.
Q. And that is the same as Petitioner's Exhibit No. 11?
A. Yes. 1

Mr. GROSVENOR: Now I offer the letter dated June 6 from the Wheeling Enameled Iron Company, containing the sentence: "It is necessary for you to execute these contracts before we can sell you licensed sanitary enameled ware," as "Petitioner's Exhibit No. 167."

The letter referred to was then marked and filed as "Petitioner's Exhibit No. 167."

Mr. NOBLE: I note the same objections to all of these letters as was heretofore noted. 2

Q. Was this jobbers license agreement similar to Exhibt No. 11 enclosed with Petitioner's Exhibit No. 167?
A. Yes.

Mr. GROSVENOR: I offer in evidence the letter dated May 31, 1910 on the letterhead of the McCrum-Howell Company, and addressed to you and signed by Howard T. Gates, secretary, containing this sentence among others: "It is necessary for you to execute these contracts before we can sell you licensed sanitary enameled ware," as "Petitioner's Exhibit No. 168." 3

The letter referred to was then marked and filed as "Petitioner's Exhibit No. 168."

Q. Was this jobber's license agreement enclosed, which is similar to Exhibit No. 11? A. Yes, sir.

Mr. GROSVENOR: Now I offer as "Petitioner's Exhibit No. 169," the letter of June 1st on the letterhead of the Union Sanitary Manufacturing Company, containing this sentence among others: "It is necessary for you to execute these contracts before we can sell you licensed sanitary enameled ware." 4

The letter referred to was then marked and filed as "Petitioner's Exhibit No. 169."

Q. Was this jobber's license agreement similar to Government Exhibit No. 11 enclosed with that letter?
A. Yes, sir.

1 Mr. GROSVENOR: I also offer the letter of June 1, 1910, on the letterhead of the Cahill Iron Works, containing this sentence: "It is necessary for you to execute these contracts before we can sell you licensed sanitary enameled ware," as "Petitioner's Exhibit No. 170."

The letter referred to was then marked and filed as "Petitioner's Exhibit No. 170."

Q. Was this copy of Exhibit No. 11 enclosed?
A. Yes.

2 Mr. GROSVENOR: I offer the letter now dated June 13, on the letterhead of the L. Wolff Manufacturing Company, containing this sentence among others: "It is necessary for you to execute these contracts before we can sell you any licensed sanitary enameled ware," as "Petitioner's Exhibit No. 171."

The letter referred to was then marked and filed as "Petitioner's Exhibit No. 171."

Q. And were these jobber's license agreements enclosed which are similar to Exhibit No. 11? A. Yes, sir.

3 Mr. GROSVENOR: I offer now in evidence the letter dated June 4, 1910, on the letterhead of McVay & Walker, containing this sentence among others: "It is necessary for you to execute these contracts before we can sell you licensed sanitary enameled ware," as "Petitioner's Exhibit No. 172."

The letter referred to was then marked and filed as "Petitioner's Exhibit No. 172."

Q. Were these contracts which are similar to Exhibit No. 11 enclosed with that letter? A. Yes, sir.

4 Mr. GROSVENOR: I offer this telegram of June 22 from E. L. Wayman to you as follows:

"Pittsburg, Pa., 22 '10.

"J. L. Sullwold,
Care Western Supply Co.,

"Please wire at once at my expense if you have executed or intend to execute jobber's license *agreement*.

"E. L. Wayman."

The telegram referred to was then marked and filed as "Petitioner's Exhibit No. 173." 1

Q. Did you receive that from Mr. Wayman?
A. Yes, sir.
Q. And this telegram (indicating) was a copy of your reply? A. Yes, sir.

Mr. GROSVENOR: I offer that telegram as "Petitioner's Exhibit No. 174."

The telegram referred to was then marked and filed as "Petitioner's Exhibit No. 174" and reads as follows:

2

"June 22, 1910.

E. L. Wayman,

Arrott Bldg., Pittsburgh, Pa.
No Sir and do not intend to

J. L. Sullwold."

Mr. GROSVENOR: I offer certain letters between you and the Cahill Iron Works Company as follows: The letter of June 8, 1910, addressed to the Western Supply Company and from the Cahill Iron Works, as "Petitioner's Exhibit No. 175."

The letter referred to was then marked and filed as "Petitioner's Exhibit No. 175." 3

Mr. NOBLE: I offer the same objections to all of these letters as were heretofore noted.

Mr. GROSVENOR: I also offer the letter addressed to the Cahill Iron Works and dated June 10, 1910, from the Western Supply Company per J. L. Sullwold, as "Petitioner's Exhibit No. 176."

The letter referred to was then marked and filed as "Petitioner's Exhibit No. 176."

Mr. GROSVENOR: And I also offer the letter from the Cahill Iron Works to the Western Supply Company dated June 14, 1910, as "Petitioner's Exhibit No. 177." 4

The letter referred to was then marked and filed as "Petitioner's Exhibit No. 177."

Mr. GROSVENOR: And I further offer the letter from the Western Supply Company to Cahill under date of June 16, 1910, as "Petitioner's Exhibit No. 178."

1 The letter referred to was then marked and filed as "Petitioner's Exhibit No. 178."

Mr. GROSVENOR: The next is dated June 20, 1910, and is addressed to the Western Supply Company and signed by the Cahill Iron Works, per F. H. Caldwell. I offer that letter as "Petitioner's Exhibit No. 179."

The letter referred to was then marked and filed as "Petitioner's Exhibit No. 179."

Mr. GROSVENOR: The next is dated June 23, and is addressed to the Cahill Iron Works and signed by
2 the Western Supply Company. I offer that as "Petitioner's Exhibit No. 180."

The letter referred to was then marked and filed as "Petitioner's Exhibit No. 180."

Mr. GROSVENOR: I offer the letters exchanged between you and your company and E. L. Wayman as follows: The letter of July 9th from Mr. Wayman to Mr. Sullwold as "Petitioner's Exhibit No. 181."

The letter referred to was then marked and filed as "Petitioner's Exhibit No. 181" and reads as follows:

3 "Edwin L. Wayman
Arrott Building
Pittsburgh

"W-791022-I
"July 9th, 1910.

"Mr. J. L. Sullwold,
c/o The Western Supply Co.,
St. Paul, Minn.

"Dear Sir:—

"Referring to our conversation in Chicago with
4 reference to Jobbers' License Agreement, I had hoped to take the matter up further with you the next day but was unable to locate you.

"In accordance with our conversation, I wish to supplement my letter of June 10th with the following:

'If you will execute the Jobbers' License Agreement, it will be satisfactory for you to continue purchasing Ware made by the J. M.

Kohler Sons Co., Sheboygan, Wis. until further notice, with the understanding that you will stock some Licensed Ware and push the sale of it and that you will furnish me with the amounts of your total purchases from the Kohler Co. monthly. These amounts need not be itemized.' 1

"I hope that Mr. Kohler will in the future see fit to manufacture Ware under Patents that I own for the reason that I believe he can make better goods than he is making at the present time and more economically. I had hoped to go further into the matter with you on the next day, but will try and see you again in Chicago when you find it convenient to be there if you will let me know. 2

"I am very pleased to make your acquaintance and trust we will become better acquainted in the future.

"With kind regards and trusting that you reached home safely, I am,

"Yours very truly,

"(Signed) E. L. Wayman."

Mr. NOBLE: Note the same objection to all of these letters. 3

Mr. GROSVENOR: I next offer the letter of June 7, 1910, addressed to Mr. Wayman and signed by the Western Supply Company per Mr. Sullwold, as "Petitioner's Exhibit No. 182."

The letter referred to was then marked and filed as "Petitioner's Exhibit No. 182" and reads as follows:

"June 7, 1910.

"Mr. Edwin L. Wayman,
Pittsburgh, Pa. 4

"Dear Sir:—

"As we purchase our small enameled ware principally from J. M. Kohler Sons Co., Sheboygan, Wis., we ask for for a written permission to continue to sell this commodity, so that we may continue to deal with this concern, whose goods we have illustrated

in our catalogues and enjoy the full rebates of the licensed jobbers agreement.

"Yours very truly,

"Western Supply Co.,

"Per J. L. Sullwold.

"dict. J.L.S."

Mr. GROSVENOR: I next offer the letter of June 10, addressed to the Western Supply Company and signed by E. L. Wayman, as "Petitioner's Exhibit No. 183."

The letter referred to was then marked and filed as "Petitioner's Exhibit No. 183" and reads as follows:

"Edwin L. Wayman
Arrott Building
Pittsburgh

"W-6101008-R.
"June 10, 1910.

"The Western Supply Co.,
St. Paul, Minn.

Gentlemen:—

"Replying to your letter of the 7th, it is impossible for me to give you permission to continue buying goods from the J. M. Kohler Sons Co., Sheboygan, Wis. This Company has been invited to execute a license agreement and use the patented process, but has not seen fit to do so. I would like to have them execute an agreement, but if they will not it is impossible to concede to any of their customers the right to purchase their goods if the customers desire to purchase licensed ware.

"I hope that you will take the matter up with them and try and convince them that they should manufacture goods in accordance with the other Companies.

"Yours very truly,

"E. L. Wayman,

"Licensor.

"Received June 13, 1910.
The Western Supply Co."

Mr. GROSVENOR: The next letter I offer is dated July 11, and is addressed to E. L. Wayman and signed by the Western Supply Company. I offer that as "Petitioner's Exhibit No. 184." 1

The letter referred to was then marked and filed as "Petitioner's Exhibit No. 184" and reads as follows:

"July 11, 1810.

"Mr. E. L. Wayman,
Pittsburgh, Pa.

"Dear Sir:—

"Yours of the 9th at hand and noted. I beg to state that the proposition outlined in your letter is an insult to any one of ordinary intelligence and our Company will now take the stand that we will use all honorable means to break up this illegal combination. 2

"We shall continue to use Kohler goods.

"Yours respectfully,

"Western Supply Co.,
"Per J. L. Sullwold

"dict. J.L.S."

Mr. GROSVENOR: The next letter is dated July 14, and is addressed to J. L. Sullwold and signed by E. L. Wayman. I offer that letter as "Petitioner's Exhibit No. 185." 3

The letter referred to was then marked and filed as "Petitioner's Exhibit No. 185" and reads as follows:

"Edwin L. Wayman
Arrott Building
Pittsburgh

"W-7141005-C

"July 14, 1910. 4

"Mr. J. L. Sullwold,
c/o Western Supply Co.,
St. Paul, Minn.

"Dear Sir:—

"This is to acknowledge receipt of your letter of the 11th inst., for which please accept my thanks.

"Yours very truly,

"E. L. Wayman."

1 Q. In one of the letters you referred to a catalogue of your products. Your company is in St. Paul, Minnesota?

A. Yes, sir.

Q. This catalogue represents, or gives an outline and description of the goods which you sell in outlying states?

A. Yes, sir.

Q. In Wisconsin? A. Yes, sir.

Q. And what other states?

A. Wisconsin, North and South Dakota, Iowa and Montana.

Q. Is it the custom for large jobbers like yourselves to
2 make catalogues showing the products which they have for sale? A. Yes, sir.

Mr. NOBLE: I object to that.

Q. Do they use these with their customers in making sales to them? A. Yes, sir.

Mr. NOBLE: Note the same objection.

Q. Do they advertise in these books the products of the manufacturers of sanitary enameled iron ware?

Mr. NOBLE: Note the same objection.

3

A. We advertise them, yes.

Q. In this catalogue which you have produced, being a volume of some 408 or 409 pages, are there pictures of many of the products of the 16 licensed manufacturers referred to in this case?

A. Quite a number of them, and so marked in the catalogue.

Mr. NOBLE: I note the same objection.

Q. Of which of the defendants are there the most articles represented?

4

Mr. NOBLE: Objected to as incompetent, irrelevant and immaterial.

A. The Standard Sanitary Manufacturing Company.

Q. How long have you used in the trade a catalogue of this description?

Mr. NOBLE: Note the same objection.

THE WITNESS: This catalogue?

Mr. GROSVENOR: No, a catalogue like this.

A. Oh, from 15 to 18 years.

Q. When did you get this one out?

A. Some three or four years ago.

Q. Now, can you obtain the products of the Standard Sanitary Manufacturing Company today? A. No, sir.

Q. You have not signed the license agreement?

A. No, sir.

Q. Are you obtaining the goods of any of those manufacturers, letters from whom I read in evidence, containing the sentence "It is necessary for you to sign these contracts in order to purchase licensed sanitary enameled iron ware from us"—are you purchasing from any of those companies today? A. No, sir.

Q. Are you, then, able to use this catalogue in your trade as far as it contains descriptions and figures and sketches of the articles produced by these manufacturers?

A. It makes the catalogue practically worthless, as there are so many goods photographed there that we cannot obtain.

Mr. NOBLE: I move to strike that out as incompetent, irrelevant and immaterial.

Mr. GROSVENOR: I offer this book in evidence as "Petitioner's Exhibit No. 186."

Catalogue referred to was then marked and filed as "Petitioner's Exhibit No. 186."

Mr. NOBLE: I object to that as incompetent, irrelevant and immaterial.

Mr. GROSVENOR: Counsel offers this book for the purpose of showing the effect upon the jobbing trade of this license agreement. It makes valueless these books which were gotten up at much expense.

Mr. NOBLE: Counsel moves that the book be stricken from the record and that the portion of the testimony contained in the statement of counsel for the Government as to making this book valueless also be stricken out.

CROSS EXAMINATION BY Mr. NOBLE:

Q. Mr. Sullwold, you can buy sanitary enameled ware goods from other jobbers, can't you?

A. From other jobbers—

Mr. GROSVENOR: Yes, you are a jobber, aren't you?

[illegible]

Q. [illegible] you can buy these goods from other jobbers?

A. [illegible]

Q. So if you wanted to buy from other jobbers, you could get these goods?

A. [illegible] at the same price we would have to sell them at.

Q. You could buy from other jobbers, however?

A. I think we could.

Q. So I would not say that for a number of years you were doing a large trade in the goods handled by your competitors? A. Yes, sir.

Q. So you would a letter containing a statement to that effect. A. Yes, sir.

Q. And that is true, is it not? A. Yes, sir.

Q. Now, your goods from the Kohler Company, do you not?

A. We are small users from the Kohler Company and [illegible] buying from the Standard Sanitary Company.

Q. And you could buy these bathtubs which you formerly bought from other jobbers if you want to now?

A. Yes, sir.

Q. And you are still engaged in the jobbing business?

A. Yes, sir.

Q. And selling your goods throughout the states which you [illegible]? A. Yes, sir.

Q. Have you any branch stores? A. No, sir.

Q. You sell them from your main store in St. Paul, do you not? A. Yes, sir.

Q. Do salesmen then go throughout the country to sell your goods? A. Yes, sir.

Q. You are submitting a sample of sanitary enameled iron [illegible] you not? A. Yes, sir.

Q. [illegible] to supply your needs?

A. Yes, sir, except those goods contained in this catalogue [illegible] which are sold by the licensed manufacturers.

Q. But you could buy these goods from other jobbers?

A. We could buy them from other jobbers, I suppose.

Q. In your letter of June 13, written by you to Mr. [illegible] you said you were still suffering from the strenuous [illegible] you all had in Chicago? A. No, sir.

Q. Which you referred to there? A. No, sir. 1

Mr. GROSVENOR: I thought Mr. Ahrens said that he had a strenuous day.

Q. Well, did you have a strenuous day on that occasion?

A. Not very.

Q. Not more strenuous than you desired it to be?

A. No, sir.

Q. The letters which you addressed to Mr. Ahrens on July 13 and July 18 expressed your opinion on the subject matters upon which you wrote, did they not? A. Yes, sir.

Q. Those were your individual views? A. Yes, sir. 2

Q. You did not there intend to speak for any other jobbers or for manufacturers of sanitary enameled iron ware?

A. No, sir.

Q. Those were your personal views?

A. Those were my personal views; yes, sir.

Q. Is the same true of the correspondence which passed between you and Mr. Torrance? A. Yes, sir.

Q. You and Mr. Ahrens and Mr. Torrance had been friends for a number of years?

A. Yes, sir; for twenty years.

Q. And those were the views which you two friends expressed to each other candidly, is that correct? A. Yes, sir. 3

Q. Is the same true of the correspondence introduced between you and the Union Sanitary Manufacturing Company and the Cahill Iron Works and the McCrum-Howell Company?

A. I am not acquainted with any of the members of the firm of the Cahill Iron Works.

Q. But of McCrum-Howell and of the Union Sanitary Manufacturing Company; that is true, is it not?

A. I don't know those in the McCrum-Howell Company.

Q. But as to the others, the same is true? A. Yes, sir.

Q. Is the same true as to the letters between you and the Wolff Company? 4

A. I don't think there is any letter there from them.

Q. It is not true as to the Cahill Company. You know Mr. Caldwell, do you not?

A. Possibly I have met Mr. Caldwell.

Q. There were some communications between you and Mr. Wayman introduced here as exhibits, where you ex-

1 pressed your personal views also, did you not? A. Yes, sir.

Q. And as I recall it there was a letter in which you said you would do all that you could to break up this so-called combination or whatever language you used?

A. That letter is there.

Q. Have you done what you could?

A. I have done what the Government has asked me to do.

Q. Had they asked you for anything at the time you wrote that letter? A. No, sir.

2 RE-DIRECT EXAMINATION BY Mr. GROSVENOR:

Q. Mr. Sullwold, Mr. Noble asked you about whether you could buy these goods from jobbers which you cannot buy from the manufacturers? A. No, sir.

Q. You are a jobber? A. Yes, sir.

Q. You sell the plumbers? A. Yes, sir.

Q. If you buy from a jobber, what price do you pay?

Mr. NOBLE: Objected to as irrelevant, incompetent and immaterial. There are no specific illustrations.

Mr. GROSVENOR: I am only bringing out the facts.

3 Mr. NOBLE: He has said that he has not tried to buy but he thinks he can. Those cases seem to be immaterial, and I object for those reasons.

Mr. GROSVENOR: Read the question.

The stenographer then read the question.

Mr. NOBLE: I would like to say that I hope the Government will confine the testimony to the witness' knowledge.

Mr. GROSVENOR: He said that he could buy from jobbers, but I want to bring out that he buys as a plumber and not as a jobber.

4 THE WITNESS: The same price that they sell at to the plumber.

Mr. GROSVENOR: Of course, we know that because the contracts that were introduced in evidence so specified.

RE-CROSS EXAMINATION BY Mr. NOBLE:

Q. Have you ever bought any of the manufacturers' goods of the licensed manufacturers from jobbers?

A. Yes, sir.

Q. Since June 1, 1910? A. Yes, sir. 1

Q. What price did you pay for those goods?

A. I paid the same price that those jobbers sell to the plumbers.

Q. What prices did you pay and from what jobbers did you buy them?

A. From Crane and Ardway Company, St. Paul, and from the Central Supply Company of Minneapolis.

Q. For what purpose did you buy those goods?

A. To fill orders; people came in and bought goods and we filled the orders.

Q. Do you remember telling Mr. Wayman that you got better prices for your goods previous to these licenses than you do now? A. I did not say that. 2

Q. What did you say?

A. I said that in the City of St. Paul we enjoyed a better profit without the license agreement than we would with it.

Q. Was there a combination among the jobbers in St. Paul as to prices on goods? A. No, sir.

Q. Or an understanding?

Mr. GROSVENOR: I object to this line of questioning.

A. No, sir. 3

Examination concluded and signing of deposition waived by agreement of counsel for the respective parties.

HENRY EDWIN BULLOCK, a witness of competent age, produced on behalf of the Petitioner, being first duly sworn, testified as follows.

DIRECT EXAMINATION BY Mr. GROSVENOR:

Q. Mr. Bullock, what is your business?

A. President of the Illinois Malleable Iron Company. 4

Q. With offices where?

A. 1801 De Versey Boulevard, Chicago.

Q. What is their business?

A. Manufacturers and jobbers.

Q. Of what?

A. Plumbers and steamfitter supplies.

Q. Are they jobbers of bathtubs made of sanitary enameled iron ware? A. Yes, sir.

1 Q. And lavatories? A. Yes, sir.

Q. And the general articles manufactured and sold by the manufacturers of sanitary enameled iron ware?

A. Yes, sir.

Q. Where are your customers located, in what states?

A. The customers for the enameled ware are in the states of Indiana, Michigan, Illinois, Iowa and Wisconsin.

Q. You receive orders from these customers and then send the orders to the manufacturers for shipment to the customers?

A. Sometimes, but mostly ship from stock.

2 Q. You also keep stock in Chicago and fill orders for customers in those states by sending your stock to them?

A. Yes, sir.

Q. You do business in both ways? A. Yes, sir.

Q. You appear here under subpœna of the Government?

A. Yes, sir.

Q. Have you signed a license agreement?

A. I have not.

Q. You were subpœnaed to produce certain papers; have you them with you?

A. They are attached to that paper which you hold in your hand—I beg your pardon, these are the papers (indicating).

3

Mr. GROSVENOR: I offer in evidence a letter produced by the witness and addressed to the Illinois Malleable Iron Company, and dated August 10. 1910, and signed by the Cahill Company, as "Petitioner's Exhibit 187."

Q. Did your company receive that letter?

A. Yes, sir.

Q. Was the pencil notation made in your office that is on there? A. Yes, sir.

4

Mr. GROSVENOR: I offer that letter without the pencil notation.

Letter referred to was then marked and filed as "Petitioner's Exhibit No. 187."

Mr. NOBLE: I offer the same objection to the receipt of these letters as was heretofore noted.

Mr. GROSVENOR: I offer the letter dated May 31, 1910, and addressed to the Illinois Malleable Iron Company and signed by the United States Sanitary

Manufacturing Company, A. H. Cline, Jr., Secretary, as "Petitioner's Exhibit No. 188." 1

Letter referred to was then marked and filed as "Petitioner's Exhibit No. 188."

Mr. GROSVENOR: I offer the letter dated June 7th and signed by the Union Sanitary Manufacturing Company, and addressed to your company as "Petitioner's Exhibit No. 189."

Letter referred to was then marked and filed as "Petitioner's Exhibit No. 189."

Mr. GROSVENOR: I offer as "Petitioner's Exhibit No. 190," the letter of June 11th, 1910, addressed to the Illinois Malleable Iron Company and signed by the United States Sanitary Manufacturing Company, A. H. Cline, Jr., Secretary. 2

Letter referred to was then marked and filed as "Petitioner's Exhibit No. 190."

Mr. GROSVENOR: I offer the letter dated August 25th, 1910, addressed to the Illinois Malleable Iron Company and signed by the National Sanitary Manufacturing Company as "Petitioner's Exhibit No. 191."

Letter referred to was then marked and filed as "Petitioner's Exhibit No. 191." 3

Mr. GROSVENOR: I think, that you do not object to the introduction of these letters in this manner?

Mr. NOBLE: No.

Q. These are all letters received from the companies in response to the several letters which you have produced?

A. Yes.

Mr. GROSVENOR: I offer the letter of May 20th, 1910, addressed to the Illinois Malleable Iron Company, and signed by the United States Sanitary Manufacturing Company, per A. H. Cline, Jr., Secretary, as "Petitioner's Exhibit No. 192." 4

Letter referred to was then marked and filed as "Petitioner's Exhibit No. 192."

BY MR. GROSVENOR:

Q. Have you ever had any conversation with Mr. Torrance and Mr. Ahrens with regard to signing this license agreement? A. No.

CROSS EXAMINATION BY MR. NOBLE:

Q. You ship your goods into various states, I understood you to say? A. Yes.

Q. How long have you been in business, that is, your Company?

A. This Company, since 1904 only, because our other charter ran out then and we had to make out a new charter.

Q. Are you still engaged in the sale of enameled iron ware? A. Yes.

Q. You sell it now? A. Yes.

Q. Where do you sell it now? A. The same states.

Q. Whose goods do you sell now?

A. Sell some of Kohler's and some of the Iron City, and we sell some of the other goods that we had in stock or coming at the time of the—

Q. (Interrupting): At the time of the agreements, you mean? A. Yes, we had a large stock of goods on hand.

Q. Are you getting goods enough to supply your needs at the present time?

A. No, not enough to supply our needs, but there is less objection because we get less orders for the goods of the manufacturers whose lines we do not handle. Our salesmen know that we cannot get those goods, and so they don't take orders for them.

Q. But the orders that you do get you are able to supply?

A. Yes, and occasionally we have to cancel if we have run out of those goods, because we can't get any more of them.

Q. In the past you also had to cancel orders for goods that you could not get?

A. Only because people would get tired waiting, but the manufacturers were willing to sell us then.

Q. You buy your goods now chiefly from whom?

A. From the Kohler Manufacturing Company and some from the Iron City.

Q. And both of them make full lines of sanitary enameled iron ware? A. Oh, no.

Q. Well, they so testified here?

A. They may make full lines, but they do not make all the other patterns that the other people do.

Q. They make all the things commonly used? 1

A. They make all the lengths of bathtubs.

Q. Of course, each company has its own design?

A. Yes, and there are some things, I believe, that the Iron City have not all the patterns of their own for lots of goods, and I don't think Kohler has a full line even aside from not having the designs of the others.

Q. I understood him to testify this morning that they had?

A. Well, he knows better than I do. What I mean was that there were some types of goods that we can't get.

Q. That is, some shapes? 2

A. Yes, and what we can't get from one, we can sometimes get from another, but we have to cancel more or less orders still.

Q. Can you buy the type of goods manufactured that have been referred to here as the goods of licensed manufacturers from other jobbers?

A. At resale or retail prices, which their contracts allow, I think.

Q. Have you bought any goods from other jobbers?

A. I think we have.

Q. And had no difficulty in getting the goods?

A. Yes we had difficulty in getting the goods. 3

Q. They sold the goods to you?

A. Yes, but I understand the manufacturers, if they knew it, would make trouble, and it has to be done in an underhand way.

Q. Did the manufacturers tell you that?

A. The Standard Sanitary Manufacturing Company won't sell us at all, but I think one manufacturer will, from a letter which we had.

Q. Do I understand that they cannot sell to jobbers?

A. Well, I understand that they could sell to jobbers, but not to jobbers who have not signed the agreement. 4

Q. I ask you whether any licensed manufacturer has told you or any officer of your Company that you could not buy these goods from licensed jobbers?

A. No manufacturer has told me that.

Examination concluded and signing of deposition waived by agreement of counsel for the respective parties.

1 JAMES K. GILMORE, a witness of competent age, produced on behalf of the Petitioner, being first duly sworn, testified as follows.

DIRECT EXAMINATION BY MR. GROSVENOR:

Q. Mr. Gilmore, what is your business?

A. Jobber of steam fitting and plumbing goods.

Q. What company are you connected with?

A. The D. M. Gilmore Company.

Q. Where are you located? A. Minneapolis.

Q. You are jobbers of sanitary enameled iron ware such
2 as bathtubs, lavatories and sinks? A. Yes, sir.

Q. You sell to the plumbers? A. Yes, sir.

Q. Where are your customers located?

A. Minnesota, North and South Dakota, parts of Wisconsin and parts of Iowa, and we go to Montana somewhat—that is, any place we can sell out there.

Q. But your customers are situated largely outside of the state of Minnesota? A. Yes, and Minneapolis.

Q. Do you receive these orders and fill them from your stock? A. Yes, sir.

Q. Do you also send your orders to the manufacturers
3 for shipment?

A. No, we ship direct from our own stock unless it is a carload shipment.

Q. And if it is a carload shipment?

A. Then we send it to the factory.

Q. And they ship from there? A. Yes, sir.

Q. You have been subpœnaed to produce certain papers here; have you done so? A. Yes.

MR. GROSVENOR: I offer in evidence the letter of June 24, 1910, as "Petitioner's Exhibit No. 193." That letter is on the letterhead of McCrum-Howell
4 Company and is signed by Mr. S. O. Dugger.

Q. Who is Mr. Dugger?

A. I think he is the Chicago sales agent of the McCrum-Howell Company; he represents them here.

MR. NOBLE: Note the same objections as heretofore noted.

Letter referred to was then marked and filed as "Petitioner's Exhibit No. 193."

Mr. GROSVENOR: Here is a telegram which you have produced and which is addressed to the McCrum-Howell Company, New York City, and which is signed by your Company and dated July 28, 1910. I offer that telegram as "Petitioner's Exhibit No. 194." 1

Telegram referred to was marked and filed as "Petitioner's Exhibit No. 194."

Mr. GROSVENOR: That telegram reads:

"Minneapolis, Minn., July 28, 1910.

McCrum-Howell Co.,
New York City. 2

Can you ship fifty Plate E six seventy immediately old price. Wire answer.

The D. M. Gilmore Co."

Q. Did you receive a reply to that? A. Yes, sir.

Q. Is this the letter (indicating)?

A. There are several there; this is one, the one dated July 28, 1910.

Mr. GROSVENOR: I offer this in evidence, it being a letter on the letterhead of the McCrum-Howell Company, dated July 28, 1910, and addressed to the D. M. Gilmore Company, as "Petitioner's Exhibit No. 195." 3

Letter referred to was then marked and filed as "Petitioner's Exhibit No. 195."

Q. Who were Eichel and Company?

A. Agents for the National Sanitary Manufacturing Company, I understand.

Q. At Richmond, Virginia? A. Yes.

Mr. GROSVENOR: I offer in evidence the letter of Eichel and Company, selling agents for the National Sanitary Manufacturing Company, which is dated July 8th, and is addressed to the D. M. Gilmore Company, as "Petitioner's Exhibit No. 196." 4

Mr. NOBLE: I object to the letter of July 8th, which is offered as Petitioner's Exhibit No. 196, on the ground that it appears to be some correspondence between a firm in Richmond, Virginia, and the

1 Gilmore Company of Minneapolis, and is not signed by any officer or person connected with any one of the licensed manufacturers.

Q. Have you had dealings before with Eichel and Company? A. I think not.

Q. Had you ever sent any orders to them?

A. I think not.

Q. How did you happen to write to them?

A. We had been doing business with two other concerns, and when this license agreement went into effect, we tried to find somebody else. We first went to the 2 National Sanitary Manufacturing Company and we presumed that Eichel and Company were a separate institution, but we afterwards found out they were not.

Q. In response to a letter of Eichel and Company you received this letter on their letterhead which has been marked as Petitioner's Exhibit No. 196? A. Yes, sir.

Mr. GROSVENOR: I offer in now the letter dated August 8th, 1910, on the letterhead of the Cahill Iron Works and addressed to your Company, as "Petitioner's Exhibit No. 197."

3 Letter referred to was then marked and filed as "Petitioner's Exhibit No. 197."

Mr. GROSVENOR: I now offer the letter dated August 15th, from the Cahill Iron Works and signed by them and addressed to the D. M. Gilmore Company, as "Petitioner's Exhibit No. 198."

Letter referred to was then marked and filed as "Petitioner's Exhibit No. 198."

Q. I show you a copy of a circular dated August 13th, 1910, and signed by E. L. Wayman and ask you if you received that? A. Yes.

4 Q. Have you ever signed the license agreement?

A. No, sir.

Q. Did you have any trouble buying enameled ware—

A. Yes, sir.

Q. Since the first of June?

A. Yes, sir; all the trouble of my life.

Q. Supposing you tell us about it? A. It is a long story.

Q. When did it begin? A. When this began.

Q. In June? A. Yes, in June, June 1st.

Q. What manufacturers refused to sell to you? 1

A. People whose goods I was handling; I have only been in the plumbing business about a year.

Q. Whose goods did you handle?

A. McCrum-Howell's and the Cahill Iron Works.

Q. Well, what happened in June?

A. They wanted me to sign one of these agreements.

Q. And you refused? A. Yes, sir.

Q. Did both of them want you to sign it?

A. Yes, sir; everybody I attempted to buy goods from

Q. Did you refuse to sign it? A. Yes, sir.

Q. Could you get goods then? A. No, sir. 2

Q. Whose goods are you handling today?

A. The Iron City's, when I can get them.

Q. Where are they located?

A. At Pittsburg, just outside or around there.

Q. Did these companies who refused to sell you say that they would sell if you would sign the agreement?

A. Yes, sir.

Q. Are you able to get their goods today? A. No, sir.

Q. Can you get them from jobbers?

A. Yes, sir; at resale prices.

Q. At the resale price fixed in the price list? 3

A. Yes, sir; which is higher in our territory than the resale price.

Q. Explain that?

A. Well, the licensed jobbers are not living up to their agreement in this territory.

Q. Are they quoting higher prices?

A. No, they are quoting lower, but they quote us the resale prices.

Q. And you are compelled to sell at lower than that price?

A. Yes, sir; but we don't do business that way, but if we get an order we attempt to fill it. 4

Q. Who is Mr. Sam O. Dugger?

A. He is the Chicago representative of the McCrum-Howell Company.

Q. I show you a telegram dated August 23rd, addressed to your firm; do you recall receiving that (indicating the telegram)? A. Yes, sir.

Mr. GROSVENOR: I offer that in evidence. It is

1 signed "S. O. Dugger," as "Petitioner's Exhibit No. 199."

Telegram referred to was then marked and filed as "Petitioner's Exhibit No. 199."

Mr. NOBLE: I object to that on the ground that there is nothing to show that he is connected with any of the defendants.

THE WITNESS: My business has been conducted with Mr. Dugger altogether; I have had nothing to do with McCrum-Howell direct.

Q. And he represents them here in Chicago?

2 A. Yes, sir.

Q. Where are his offices? A. On Dearborn Street.

Q. And he has taken orders from you for McCrum-Howell? A. Yes.

Q. And they were shipped?

A. Yes, sir; before this agreement went into effect.

Mr. GROSVENOR: I will read that telegram:

"Kansas City, Mo., August 23, 1910.

D. M. Gilmore Co.,
Mpls.

3 New York wires me they cannot ship tubs unless you sign agreement. I advise your doing so at once, I will be in Chicago Saturday, hope to see you next week.

S. O. Dugger."

Q. Does Mr. Kohler's Company do a large business in St. Paul? A. Yes, sir.

Q. You have stated that the jobbers up there are not living up to the resale prices? A. Yes, sir.

Q. Is that because they are meeting with competition from Kohler's goods? A. No, sir.

4

Mr. NOBLE: I object to the question and to the witness giving the answer as to the alleged statement that the jobbers are not living up to the resale price.

Q. Is it just competition between the jobbers?

A. I don't know how to answer that.

Q. I show you a letter from the McCrum-Howell Company, Chicago, and signed by S. O. Dugger. It is dated August 26th, 1910. Did you receive that letter? A. Yes.

Mr. GROSVENOR: I offer that letter as "Petitioner's Exhibit No. 200." 1

Letter referred to was then marked and filed as "Petitioner's Exhibit No. 200."

Q. (Reading):

"Chicago, 8/26/10.

D. M. Gilmore Co.,
Minneapolis, Minn.

Gentlemen:

The writer has just returned to the City this morning. 2

"As I wired you from Kansas City, I received a telegram from the home office notifying me that you had asked them to ship some tubs and that it was absolutely necessary for you to sign the Enameled Ware Contract before they could do so. In my telegram to you I advised your signing it at once.

"Upon my return to the office I found a letter from our Secretary in which he states that Mr. Wayman was sending a letter to the jobbers in your territory who had signed their contracts. He has stated to them that they are at liberty to quote from 10 to 12½% below the resale price in 3 the district affected by the Western Plumbing Supply Co." Is that the Company of which Mr. Sullwold is President?

A. Yes, the Western Supply Company is the Company.

Q. Do you know of any other Western Supply or Western Plumbing Supply Company? A. No, sir.

Q. Where is the Western Supply Company located?

A. It is in St. Paul.

Q. (Continuing): "You can see from this that it is Mr. Wayman's intention to protect the jobbers who have signed the agreement against the cut prices being made by certain jobbers who are not co-operating in the resale price. 4

"As I stated to you on two or three different occasions, we certainly want to do business with you and I want you to sign up the agreement so you will receive the benefits of any action taken by Mr. Wayman in matters of this character.

"I trust that you have signed this agreement and sent it in without delay. Also that you have favored us with this order.

[illegible] and trying very hard to get up to see you the last part of the coming week.

"Yours very truly,

"S. O. Dugger.

[illegible] this letter as strictly confidential [illegible] whether or not I am at liberty to give you the information.

Mr. [illegible] (interrupting): I object to that question on the same grounds as heretofore stated and move that it be stricken out.

[illegible]

Q. (By Mr. [illegible]) You have said that all your dealings with the [illegible] Company were with S. O. Dugger?

A. [illegible] of payments.

Q. They always went to him? A. Yes, sir.

Q. And they were filled? A. Yes, sir.

Q. That is previous to June 1st, 1910? A. Yes.

Mr. [illegible]: I offer another letter dated [illegible] to the D. M. Gilmore Company, [illegible], and signed by S. O. Dugger, as "Defendant's Exhibit No. 201."

[illegible] was then marked and filed as "Defendant's Exhibit No. 201."

Mr. [illegible]: That letter reads as follows:

"Chicago 8/12/10.

"The D. M. Gilmore Co.,

[illegible] Minn.

"Gentlemen:

"Since writing you I have been in correspondence with the factory and have a letter from them dated [illegible] stating that the back orders they have on hand [illegible] on account of the following:

[illegible] guaranteed Tubs

[illegible]

[illegible]

[illegible]

"These they say they will be very glad to ship to you at the prices at which the orders were placed as a local shipment allowing the regular freight. 1

"I trust that you will make up your mind to sign the agreement and send me additional specifications at the prices in effect today to make up a car for shipment. We have talked this matter over so many times, that there is really nothing more that I can say just at this time. As it is, as I see it, a matter that you will have to settle in your own minds as to just what you want to do.

"With very kind regards, and hoping to hear from you soon, I am 2

"Yours very truly,

"S. O. Dugger."

Q. This (indicating) is your letter in response to that one, dated 9/16/10, and I will offer that in evidence as "Petitioner's Exhibit No. 202."

Letter referred to was then marked and filed as "Petitioner's Exhibit No. 202."

Mr. GROSVENOR: Then on 9/19/10, there is a letter signed by S. O. Dugger on the letterhead of the McCrum-Howell Company and addressed to you which I offer as "Petitioner's Exhibit No. 203." 3

Letter referred to was then marked and filed as "Petitioner's Exhibit No. 203."

Mr. GROSVENOR: I offer next the letter on the letterhead of the Union Sanitary Manufacturing Company, dated June 6, 1910, and addressed to the D. M. Gilmore Company, containing this sentence: "It is necessary for you to execute these contracts before we can sell you licensed sanitary enameled ware." That letter is offered as "Petitioner's Exhibit No. 204." 4

Letter referred to was then marked and filed as "Petitioner's Exhibit No. 204."

Mr. GROSVENOR: And the next is a letter from the Wheeling Enameled Iron Company, dated June 6th, 1910, and addressed to you. I offer that as "Petitioner's Exhibit No. 205."

1 Letter referred to was then marked and filed as "Petitioner's Exhibit No. 205."

Mr. GROSVENOR: That contains this sentence: "It is necessary for you to sign these contracts before we can sell you licensed sanitary enameled ware." I next offer a letter from the Cahill Iron Works, dated June 1st, and addressed to you, stating: "It is necessary for you to execute these contracts before we can sell you licensed sanitary enameled ware." I offer that letter as "Petitioner's Exhibit No. 206."

Letter referred to was then marked and filed as
2 "Petitioner's Exhibit No. 206."

CROSS EXAMINATION BY Mr. NOBLE:

Q. Do you buy Kohler's goods, Mr. Gilmore?

A. No, sir.

Q. Did you ever try to buy them? A. No, sir.

Q. Why don't you buy them?

A. Because they are tied in Minneapolis with the Crane Company.

Q. You mean the Crane Company have the exclusive right to sell the Kohler goods in that city? A. Yes, sir.

3 Q. Do you purchase the Rundel Company's goods?

A. No, sir—I think we have used a few cheap sinks.

Q. Have you tried to?

A. Yes, sir; we have talked to them, but they were filled up.

Q. They were so full of orders that they could not take your orders? A. Yes, sir.

Q. Previous to June 1st, 1910, have you ever attempted to buy goods from the Iron City Company?

A. No, sir—yes, I believe we had written them when we first started in business.

4 Q. And they would not sell you goods?

A. Yes, but they quoted us.

Q. And you did not buy goods from them? A. No, sir.

RE-DIRECT EXAMINATION BY Mr. GROSVENOR:

Q. You produced certain contracts being jobber's license agreements similar to Government's Exhibit No. 11, not executed by you, upon which the names of the following companies appear: the McCrum-Howell Company, the

Wheeling Enameled Iron Company, National Sanitary Manufacturing Company; Union Sanitary Manufacturing Company; Cahill Iron Works. Those contracts accompanied the several letters which have been offered in evidence and which contain the statement that it would be necessary for you to sign these contracts in order to obtain licensed sanitary enameled ware? A. Yes, sir. 1

RE-CROSS EXAMINATION BY MR. NOBLE:

Q. Can't you buy Kohler goods for sale outside of Minneapolis? A. No, sir.

Q. Why not? 2

A. Because the Kohler people don't want to sell me.

Q. Why not? A. Because they are tied up, I suppose.

Q. In that territory, you mean? A. Yes, sir.

Q. Have you tried to get goods from the Kohler Company? A. Yes, sir.

Q. And is that the reason they have assigned?

A. Yes, sir.

Q. You buy your goods from the Iron City Company?

A. Yes.

Q. And that is a large manufacturing concern, is it not?

A. I understand so, yes, sir. 3

Q. They manufacture substantially a full line of sanitary enameled iron ware? A. I think so, yes, sir.

Q. They manufacture all the types that you have tried to procure, don't they? A. No, not exactly.

Q. I should not have said types; they manufacture all the articles you have tried to secure? A. Not exactly.

Q. As distinguished from designs?

A. Yes, as distinguished from designs.

Q. You say that you can buy goods from these jobbers in your territory at something off the resale prices now?

A. No, sir. 4

Q. Well, have you tried to buy them?

A. We have occasionally, but of course, we don't like to buy any more goods from our competitors than is necessary, but where we have done so it was at resale prices.

Q. You said they were violating their resale agreement?

A. Yes, sir.

Q. Since that time, have you tried to buy any licensed goods from the jobbers?

A. Yes, sir; we have placed orders with them.
Q. And they have supplied you with those goods?
A. Yes, sir.

Mr. NOBLE: That is all.

RE-RE-DIRECT EXAMINATION BY Mr. GROSVENOR:

Q. In the sanitary enameled ware business some articles have particular names, like this five-year-guaranteed bathtub named Trimo; some manufacturers would carry that with different names? A. Yes, sir.

Q. And then there would be a demand for it as it was named? A. Yes, sir.

Q. And all the manufacturers would manufacture that same bathtub under a different name? A. Yes, sir.

Q. And they would have a special demand for that kind?
A. Yes, sir.

Q. When you say that one company manufactures practically all lines, you mean they manufacture all the articles under the standard? A. Yes.

Q. But the customer may sometimes want the bathtub with a particular name, is that right? A. Yes, sir.

Q. And that kind of bathtub you cannot sell him because you did not sign the license agreement?

Mr. NOBLE: I object to that question as leading and there is no such testimony as that?

A. Yes, sir.

Mr. NOBLE: The witness has testified that he can get those goods from jobbers?

Q. If you get them from the jobbers, however, you buy at what price? A. The resale price.

Examination concluded and signing of deposition waived by agreement of counsel for the respective parties.

CHARLES H. CHANDLER, a witness of competent age, produced on behalf of the Petitioner, being first duly sworn, testified as follows. 1

DIRECT EXAMINATION BY MR. GROSVENOR:

Q. Mr. Chandler, what is your business?

A. Jobbing, plumbing and heating goods.

Q. What company are you connected with?

A. The Chandler Company.

Q. What place? A. Cedar Rapids, Iowa.

Q. Is your Company jobbers of sanitary enameled iron ware, such as bathtubs, lavatories and sinks? 2

A. Yes, sir; a full line.

Q. Do you sell to plumbers? A. Yes.

Q. The plumber is the man who puts the bathtub in the house? A. Yes.

Q. Are any of your customers situated outside of the State of Iowa? A. Yes.

Q. What States? A. South Dakota, Minnesota, Wisconsin and a very little in Kansas and Missouri.

Q. Kansas and Missouri?

A. Yes, a very little in Kansas and Missouri.

Q. You receive orders from these customers and then ship them goods from your stock in Cedar Rapids? A. Yes. 3

Q. You sometimes have the goods shipped direct to them from the factory? A. Yes, we have done that.

Q. But, mostly you ship from your own stock?

A. Yes, we have orders from architects for goods different from what we sell, say from the United States Manufacturing Company or Standard Sanitary Manufacturing Company, which, in those cases, we order the goods shipped direct.

Q. From the factory? A. From the factory, yes.

Q. Did you have any trouble after June 1st, in getting goods? 4

A. No, we have been confining our purchases to the Kohler people.

Q. Before that did you buy any goods from the defendants in this case?

A. We bought all of our stuff practically from the United States Sanitary Manufacturing Company.

Q. Before June 1st? A. Yes, practically all of them.

1 Q. Have you discontinued using them? A. Yes.

Q. Did they refuse to sell them to you? A. Yes.

Q. Did they offer to sell them if you would sign a contract? A. Yes.

Q. Was the contract similar to Government's Exhibit No. 11. A. Practically the same thing, I think.

Q. And did you decline? A. I did.

Q. Were you handling any of the goods of these other manufacturers?

A. Some of the Standard Company's. We have bought a great many goods of theirs.

2 Q. Are you handling any of their goods now? A. No.

Q. Did they send you a contract? A. Yes.

Q. And ask you to sign it? A. Yes.

Q. Did you decline to do so? A. Yes.

Q. Did you send any orders in after that?

THE WITNESS: To the United States people?

Mr. GROSVENOR: Yes, to be filled.

A. No, they were refused and the letter of refusal is here.

Q. Did you send any orders to the Standard Sanitary
3 Manufacturing Company? A. No.

Q. You did not send any to the Standard?

A. No, only to the United States.

Q. Will you look at the Petition on page 71 and state whether you recall receiving a letter about that date from Mr. E. L. Wayman, of which that is a copy?

A. Yes, I have that letter with me.

Q. You have been subpœnaed to appear in this case?

A. Yes.

Q. And to produce certain correspondence? A. Yes.

Q. Have you those papers with you?

A. All but the telegram which is a reply.

4 Q. You produce a letter dated May 31, from the United States Sanitary Manufacturing Company, containing this sentence among the others: "It is necessary for you to execute this contract before we can sell you licensed sanitary enameled ware." The contract attached came with it?

A. Not with that letter; this is from the Union Sanitary.

Q. Did this one come? A. Yes, sir.

Q. That is similar to Government's Exhibit No. 11.

A. Yes.

Q. You have also handed me a letter to you from the Standard Sanitary Manufacturing Company, containing this sentence: "It is necessary for you to sign this contract before we can sell you any licensed sanitary enameled ware." Is there attached to that letter a contract similar to Government's Exhibit No. 11?

A. Yes, sir; to all of these letters.

Mr. GROSVENOR: That letter of Mr. Wayman's which the witness has identified as being on page 71 of the Petition, I will offer in evidence as "Petitioner's Exhibit No. 207."

Letter referred to was then marked and filed as "Petitioner's Exhibit No. 207."

Mr. GROSVENOR: Here is a letter dated May 24, addressed to your Company and signed by the United States Sanitary Manufacturing Company, by A. H. Cline, Jr. I offer that letter as "Petitioner's Exhibit No. 208."

Letter referred to was then marked and filed as "Petitioner's Exhibit No. 208."

No Cross Examination.

Examination concluded and signing of signature waived by agreement of counsel for the respective parties.

OSCAR A. KROOS, a witness of competent age, produced on behalf of the Petitioner, being first duly sworn, testified as follows.

DIRECT EXAMINATION BY Mr. GROSVENOR:

Q. Mr. Kroos, you are connected with the J. M. Kohler Sons Company? A. Yes, sir.

Q. What is your position. A. Secretary.

Q. How long have you been with them?

A. About eleven years.

Q. What department? A. In the office department.

Q. You had the oversight or supervision of orders?

A. Yes, sir; shipments and sales.

Q. You are advised of the prices before the goods are sold? A. Yes, sir.

1 Q. And the discounts which you make to jobbers?
A. Yes, sir.
Q. And the prices at which they have been sold during the last three or four years? A. Yes, sir.

Examination Suspended.

Adjourned.

IN THE CIRCUIT COURT OF THE UNITED STATES,
FOR THE DISTRICT OF MARYLAND.

2 THE UNITED STATES OF AMERICA,
Petitioner,

vs.

STANDARD SANITARY MANUFACTURING COMPANY, *et al.*,
Defendants.

3 Post Office Building,
New York, N. Y., November 23, 1910.

Pursuant to notice, the taking of evidence for the Petitioner was resumed in the Post Office Building, in New York, N. Y., on the twenty-third day of November, 1910, at 10.30 A. M.

COUNSEL PRESENT:

EDWIN P. GROSVENOR, Esq., Special Assistant to the Attorney-General, for the Complainant.
HERBERT NOBLE, Esq.,
HARTWELL P. HEATH, Esq., on behalf of the De-
4 fendants.

CHARLES S. HIRSCHFELD, a witness of competent age, produced on behalf of the Petitioner, being first duly sworn, testified as follows.

DIRECT EXAMINATION BY Mr. GROSVENOR:

Q. Mr. Hirschfeld, what is your business?
A. Jobbing of plumbing supplies.
Q. Where is your office? A. 252 Pearl Street.

Q. New York City? A. New York City. 1

Q. Do you direct the business of your Company?

A. I do; I am half owner.

Q. And by plumbing supplies you mean such things as sanitary enameled iron ware goods, that is, bathtubs, and lavatories and sinks? A. I do.

Q. You buy your goods, then, from the manufacturers, and sell them to the plumbers? A. We do.

Q. State the name of your firm?

A. The Central Plumbers Supply Company.

Q. Are your customers located in other cities than New York? A. They are. 2

Q. State where?

A. New Jersey, Connecticut, Massachusetts and Vermont.

Q. In filling the orders of your customers, you ship to them from your stock in New York City?

A. Sometimes from the stock and at times from the various factories.

Q. You mean from the factories of the manufacturers?

A. From the factories of the manufacturers; yes.

Q. Well, will you state with what manufacturers you did business prior to June 1, 1910? 3

A. The Standard Sanitary Manufacturing Company of Pittsburg; the United States Sanitary Manufacturing Company of Monaca, Pennsylvania; the Barnes Manufacturing Company of Mansfield, Ohio; the Humphryes Manufacturing Company of Mansfield, Ohio; the Cahill Iron Works of Chattanooga, Tennessee; Weiskittel Sons & Company, Baltimore, Maryland.

Q. In the course of business you sent orders to these various manufacturers for goods which were then shipped to you in New York City?

A. We had them shipped to our stock in New York City and to the various customers as the occasion presented itself. Sometimes it was necessary to ship to the customers at their places of business. 4

Q. That is, some orders were shipped from your stock?

A. Yes, sir.

Q. And some direct to the customer by the manufacturer? A. Yes.

Q. To your customers in these various states?

A. Yes, sir.

1 Q. As previously stated?

A. Yes, sir; as previously stated.

Q. Since June 1st, 1910, have you bought any goods from the Standard Sanitary Manufacturing Company?

A. We attempted to buy goods—

Mr. NOBLE: I object to that; that is not the question.

Q. Have you bought any goods from the Standard Sanitary Manufacturing Company since June 1st, 1910?

A. We have not.

2 Q. Have you sent orders to the Standard Sanitary Manufacturing Company since then?

THE WITNESS: I would like to have that other question read again to me.

The stenographer then read the next to the last question.

THE WITNESS: We have.

Q. Well, were those on orders sent to the Standard Sanitary Manufacturing Company prior to June 1st, 1910?

Mr. NOBLE: Objected to as leading.

3 A. Some of them were.

Q. You have been subpœnaed to produce certain papers, Mr. Hirschfeld, have you them here? A. I have.

Mr. GROSVENOR: Will you let me see the subpœna and the papers which you have produced?

The witness then handed the subpœna and the papers referred to to counsel for the Government.

Q. I show you a letter on the letterhead of the Standard Sanitary Manufacturing Company, dated June 10, 1910, which you have produced under subpœna, and which is ad-
4 dressed to the Central Plumbers Supply Company, of New York, and I ask you if that is a letter which was received by you from that Company? A. It is.

Mr. GROSVENOR: I offer that letter in evidence as "Petitioner's Exhibit No. 210."

Letter referred to was then marked and filed as "Petitioner's Exhibit No. 210."

Mr. GOSVENOR: I will read that letter. (Reading):

"Pittsburgh, U. S. A., 6/10/10. 1

"Central Plumbers Supply Company,
New York, N. Y.

"Gentlemen:—

"We are in receipt of your valued order #23753 specifying a number of Plate P-601 sectional lavatories. In view of the fact that the sheets covering re-sale prices applying to our sectional lavatories has not been issued, we will arrange to enter your order and invoice at previous prices, provided you have signed the jobber's license agreement whereby 2
you would be entitled to receive licensed sanitary enameled ware.

"Yours very truly,
"STANDARD SANITARY MFG. CO.,
"H. J. C. Heckman,
"HJCH Mgr. Quotation Department."

Q. Have you produced order #23753 which is referred to here? A. Yes, sir; this is it (indicating).

Q. Now, Mr. Hirschfeld, this order #23753 was, as this letter states for sectional lavatories; where was the customer located? A. Mt. Vernon, New York. 3

Q. What is the name of the Company?

A. The Westchester Lighting Company.

Q. With what officer or person did you have your dealings?

Objected to as immaterial.

A. We had dealings with Mr. Gates, the superintendent of the Westchester Lighting Company, and also Mr. Hodge of Hodge Brothers, who were the contractors for installing these fixtures.

Q. You mean by contractors, the plumbers? A. Yes, sir. 4

Q. Your firm is a jobbing firm? A. Yes, sir; it is.

Q. Your name appears in this book, known as Petitioner's Exhibit No. 30 (indicating)? A. It does.

Q. And Hodge Brothers are plumbers? A. They are.

Q. What was this building in which these were to be installed?

A. The Westchester Lighting Company's comfort stations.

1 Q. For the public? A. Yes, for the public.

Q. How did you come to send the Standard Sanitary Manufacturing Company an order for these goods which were to be installed in this building in Mt. Vernon?

A. We agreed to furnish Standard Sanitary Manufacturing Company's lavatories to be used in the Westchester Lighting Company's public toilets.

Q. What date was that? A. June 8th, 1910.

Q. You then accepted the order of Hodge Brothers?

Objected to as immaterial.

2 A. We did.

Q. Did you send the orders to the Standard Sanitary Manufacturing Company? A. I did.

Q. And it is in response to that order, #23753, that you received this letter which is marked as Petitioner's Exhibit No. 210? A. It is.

Q. Were you able to get goods of the Standard Sanitary Manufacturing Company to fill those orders of Hodge Brothers? A. We were not.

Q. I show you a letter dated July 14th, 1910, on the letterhead of the Standard Sanitary Manufacturing Company and addressed to the Central Plumbers Supply Company, and I ask you if you received that letter?

3 A. We did.

Mr. GROSVENOR: I offer that letter in evidence as "Petitioner's Exhibit No. 211."

Letter referred to was then marked and filed as "Petitioner's Exhibit No. 211."

Mr. GROSVENOR: That letter reads as follows. (Reading):

"Pittsburgh, U. S. A., July 14, 1910.

4 "Central Plumbers Supply Company,
New York, N. Y.

"Gentlemen:—

"We are in receipt of your favor of the 9th, reference C. S. H., D., addressed to New Brighton, wherein you advised that you were in receipt of postal card from them in regard to Order #23753 for P-601 Sectional Lavatories, which is marked for shipment to Hodge Bros., Mt. Vernon, N. Y.

"In reference to releasing this material and making shipment, regret to advise that we cannot do so, although this material is at present prepared for shipment, but we have instructions not to make any shipment until in receipt of your signature to the Resale Agreement which was forwarded you sometime ago. Upon receipt of your signature we will make immediate shipment. 1

"Yours truly,

"STANDARD SANITARY MFG. CO.,

"HAC. Per H. A. Craig."

Q. Have you produced in response to your subpœna the resale agreement, which this letter states was forwarded to you? 2

A. I have; in fact, I have about twenty of them.

Q. Mr. Hirschfeld, you have handed me a package of ontracts entitled "Jobber's License Agreement," similar to Government's Exhibit No. 11; about what time did you receive these contracts?

A. I received them on the morning of June 6.

Q. 1910? A. 1910.

Mr. GROSVENOR: Without offering all of these in evidence, I will state that they appear to be signed and headed as follows: Between the Day-Ward Company and the Central Plumbers' Supply Company; McVay and Walker Company and the Central Plumbers' Supply Company; A. Weiskittel Sons Company and the Central Plumbers' Supply Company; Kerner Manufacturing Company and the Central Plumbers' Supply Company; Wheeling Enameled Iron Company and the Central Plumbers' Supply Company; another one of McVay and Walker Company— 3

THE WITNESS: They were all sent to us in duplicate. 4

Mr. GROSVENOR (continuing): United States Sanitary Manufacturing Company and the Central Plumbers' Supply Company and the Cahill Iron Works and the Central Plumbers' Supply Company.

Q. Did any letters accompany those contracts?

A. They did.

DIRECT EXAMINATION.

agent of the Department

letters and ask you if

would like to have the exam-

which have been in-

as one exhibit for identi-

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letters I offer as exhibits

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letter from A.

Company containing this sen-

for you to execute these

sell you licensed sanitary

from the Wheeling

Company), containing this sentence,

execute these contracts be-

licensed sanitary enameled

from McVay and Walker

"It is necessary for you

before we can sell you

enameled ware." A letter from

Company containing the sentence,

execute these contracts

licensed enameled iron

Iverner Manufacturing

sentence: "It is necessary

of these contracts before

sanitary enameled ware."

States Sanitary Manufac-

containing the sentence, "It is

these contracts before

sanitary enameled ware."

And letter from the Standard Sanitary Manufacturing Company, "It is necessary for you to execute these contracts before we can sell you licensed sanitary enameled iron ware." 1

Q. Did you execute any of these contracts?

A. We did not.

Q. You have also produced another contract or Jobber's License Agreement with the Kerner Manufacturing Company, which is dated October 11, 1910, in duplicate with a letter dated October 11, 1910; did you receive those about the time indicated? A. I did.

Mr. GROSVENOR: The letter reads as follows: 2

"Zelienople, Pa., Oct. 11, 1910.

"Central Plumbers Supply Co.,
252 Pearl St.,
New York City, N. Y.

"Gentlemen:—

"In reply to your letter of the 24th, we beg to state, that we will be glad to sell you, if you will agree to sign the enlosed Jobber's License Agreement.

"Trusting to hear from you, we beg to remain, 3

"Yours truly,

"KERNER MANUFACTURING CO.,

"CF/MD Carl Falk."

I offer that letter in evidence with the contracts attached as "Petitioner's Exhibit No. 212."

Letter and contracts referred to were then marked and filed as "Petitioner's Exhibit No. 212."

Q. Have you that letter referred to?

A. The letter referred to is simply an inquiry for a catalogue and prices.

Q. You produced a letter on the letterhead of Edwin L. Wayman, dated June 3, 1910, and addressed to the jobbing trade; did you receive that letter about the time indicated from Mr. Wayman? A. I did. 4

Mr. GROSVENOR: I offer that letter in evidence as "Petitioner's Exhibit No. 213."

Letter referred to was then marked and filed as "Petitioner's Exhibit No. 213."

1 Q. Mr. Hirschfeld, did you ever attempt to get any Standard sanitary goods to fill an order in Valhalla?

A. We did.

Q. What is the name of the customer?

A. The Jennie Clarkson Home for Girls.

Q. Who was the plumber?

A. Frank J. McGuire, of White Plains, New York.

Q. What did he ask you to get for that Home?

A. This is the list (indicating).

Q. Was this a new building being put up there?

A. Yes, sir.

2 Q. And was it to be supplied with the sanitary enameled iron ware? A. Yes, sir.

Q. And did Mr. McGuire come to you to fill his orders? A. He did.

Q. What date was this?

A. The 4th day of June is the day of the quotation; the order was not offered to the Standard Sanitary Manufacturing Company until three or four days later.

Q. Just read into the record from this order all the different items which are of sanitary enameled iron ware and which Mr. McGuire was to buy from you?

3 A. 10 waterclosets; 5 bathtubs; 10 washstands, or lavatories; 2 urinals and 1 sink.

Q. A kitchen sink? A. A kitchen sink.

Q. Did you have any dealings with any of the managers of this Home?

A. All our dealings were through Mr. McGuire.

Q. Did he specify what goods he required?

A. The goods were selected from the Standard Sanitary Manufacturing Company's New York show rooms.

Mr. NOBLE: I move that the answer be stricken out.

4 Mr. GROSVENOR: Just answer that question yes or no.

The question was then read by the stenographer.

A. Yes.

Q. Did you attempt to get these goods from the Standard Sanitary Manufacturing Company? A. I did.

Q. How?

A. Mr. McGuire called at our place of business and stated that he was ready for the fixtures, meaning the

bathtubs and the lavatories and so forth for the Jennie Clarkson Home for Girls; I informed him he had better talk with Mr. Bassett of the Standard Sanitary Manufacturing Company's New York office, and he called up Mr. Basset and Mr. Bassett informed him— 1

Mr. NOBLE: Don't state that. I object to what Mr. Bassett informed him over the telephone.

THE WITNESS: Well, Mr. Bassett told me—

BY MR. GROSVENOR:

Q. Who is Mr. Bassett?

A. He is employed by the Standard Sanitary Manufacturing Company and is connected with their New York office. 2

Q. What did he say to you?

A. He informed me that he could not accept the order for the Jennie Clarkson Home for Girls, that the job would have to be re-figured, and he said it did not make any difference what jobber got the order because they would have to be figured at the re-sale prices.

Q. Did he say anything about the contract? A. No, sir.

Q. Did you do anything later to get the goods from the Standard Sanitary Manufacturing Company? 3

Mr. NOBLE: Objected to. He said that he told Mr. McGuire that he had better talk to Mr. Bassett.

Mr. GROSVENOR: Read the question.

The stenographer then read the question.

A. We did not.

Q. Mr. McGuire was a plumber? A. That is right.

Q. And in the course of business the plumber goes to the jobber for goods? A. That is correct.

Q. And the plumber installs them in the house after they are furnished to him by the jobber?

A. That is correct. 4

Q. Did you give up the order of Mr. McGuire?

A. We informed Mr. McGuire that we could not procure the Standard Sanitary Manufacturing Company's goods for the Jennie Clarkson Home for Girls and that if he insisted on our furnishing those goods, we would have to refuse the order, and I asked Mr. McGuire to take the matter up with their people and have other goods substituted.

Q. Well, whose goods were finally substituted?

A. We substituted the J. M. Kohler Company's goods.

Q. Where is the Kohler Company?

A. In Sheboygan, Wisconsin.

Q. Well, coming back to this order for Hodge Brothers, for the Westchester Lighting Company, what were those orders for?

A. Sectional lavatories; four or five lavatories joined together and called sectional lavatories.

Q. All of that was in sanitary enameled iron ware?

A. All sanitary enameled iron ware goods.

Q. I now show you a letter dated August 10, on the letterhead of the Standard Sanitary Manufacturing Company and signed by J. F. Conran; did you receive that letter? A. Yes.

Mr. GROSVENOR: I offer that letter in evidence as "Petitioner's Exhibit No. 214."

Letter referred to was then marked and filed as "Petitioner's Exhibit No. 214."

Mr. GROSVENOR: The letter reads as follows:

"New York, N. Y., August 10th, 1910.

"Central Plumbers Supply Company,
252 Pearl Street,
City.

"Gentlemen:—

"I have your letter of August 9th and contents carefully noted. Beg to say that we have taken this matter up with our Order Department, but up to the present time, have not received the information, however, as soon as we do, will communicate further with you.

"The writer understands your position in regard to this matter fully, but it is also his personal opinion that you ought to sign the Agreement. If the Courts decide that it is illegal the matter will be dropped and the arrangements dissolved, but there is no question in the mind of every lawyer who has examined the instrument that it is perfectly legal, and we think the Courts will so decide, but as you know, getting a decision on questions

of this kind is slow work and no one would like a quick decision better than our company, and in the meantime, we think that you ought to sign this Agreement for the good of the business in general, it will entail no hardship on you, as you are practically living up to the prices agreed on. 1

"Yours respectfully,

"STANDARD SANITARY MANUFACTURING COMPANY,

J. F. Conran, Mgr."

Q. Now, Mr. Hirschfeld, I show you Petitioner's Exhibit No. 30, that is the part thereof which is the printed book, and ask you if that is a list of the principal jobbers of sanitary enameled iron ware of the United States? 2

A. It is.

CROSS EXAMINATION BY MR. NOBLE:

Q. Mr. Hirschfeld, the letter which is Exhibit No. 214, which counsel for Government offered in evidence, contains this sentence, "There is no question in the mind of every lawyer who has examined the instrument that it is perfectly legal, and we think the Courts will so decide, * * * " You remember getting the letter containing that sentence, do you not? A. I do. 3

Q. I understood you to say that you got these various proposed contracts with the various companies which the Government has marked as Exhibit for identification No. 14, accompanied by the letters which the Government has had marked as Petitioner's Exhibit for identification No. 15, on the morning of June 6th; am I correct as to that? A. You are.

Q. And it was on the morning after you received those letters you got the order about which you first told Mr. Grosvenor which was the order known as No. 23753, with reference to Hodge Brothers; am I correct? 4

A. The order of Hodge Brothers was placed about two days after the receipt of these communications.

Q. In other words you received the order from Hodge Brothers probably on the morning of June 8th; is that what you mean? A. About that time.

Q. And you sent it forward to the Standard Sanitary Manufacturing Company on June 10?

A. I sent it on June 8; I mailed it myself. I remem-

ber that distinctly. I mailed it to the Standard Sanitary Manufacturing Company in Pittsburgh?

Q. I notice that among these letters which you received, there are a number that are mutilated, the name of the addressee being cut out? A. That is correct.

Q. How did that happen? A. I mutilated them myself.

Q. Tell the circumstances of that?

A. Mr. Darling, the Special Agent for the Government, called to see me and asked me if I would let him have these letters, and I said I would, and I asked him if he would object to our cutting our name out, and he said he did not think it would make any difference, so it was cut out.

Q. All the papers which you have produced this morning were shown to Mr. Darling previous to your being subpœnaed?

A. No, sir; they were not. There are some things that were produced here and not shown to them before.

Q. Didn't you give him several copies of the contracts between the Standard Sanitary Manufacturing Company and—

A. (Interrupting): Yes, sir; several.

Q. Were those produced here? A. No, sir.

Q. So you were not correct when you said that you produced here things which you had not shown to Mr. Darling previously?

Mr. GROSVENOR: I called the names of all the contracts which were handed to me by the witness and the Standard Sanitary Manufacturing Company contract was not among them.

Mr. NOBLE: And I call attention of counsel to the fact that the Standard Sanitary Contract was not among them.

Mr. GROSVENOR: And I read those names on the record to show that that was not included.

Q. These letters which you mutilated were supplied to Mr. Darling, were they not? A. Yes, sir.

Q. And the others that were not mutilated?

A. They were also supplied to Mr. Darling; if I did not cut the names out it was an oversight.

Q. So as to all the letters with the contracts those you had previously supplied to Mr. Darling? A. Yes, sir.

Q. And the letters accompanying the contracts you had shown to Mr. Darling? A. I showed him copies of them. 1

Q. I observed that in this one which you received from the Wheeling Enameled Iron Company there is no name on it; was it sent to you?

A. The envelope was addressed to us and the contract is also; possibly the Wheeling Company sent out a lot of them and—

Q. But that is all speculation on your part?

A. Yes, sir.

Q. Then, how do you know that this is the one which you received through the mail; what have you on it to identify it? 2

A. I have no mark on it whatsoever, but if Mr. Darling will testify that this is the one which I gave him I will be perfectly willing to swear to it.

Q. And that is true as to the other copies? A. Yes, sir.

Q. In these various contracts which you produced and which are marked No. 14 for identification, I call your attention to the fact that the discounts allowed the jobber in those various contracts differ one from the other, that is that the Day-Ward Company's differs from McVay and Walker's and so on?

A. There are various differentials allowed. 3

Q. Which are different?

A. There are a number of them alike and a number are different.

Q. Will you point out the ones that are alike?

A. The United States Sanitary Manufacturing Company's and the Cahill Iron Works.

Q. But the others differ each from the other?

A. No, the others have the differentials marked on them—

Q. (Interrupting): And those differ as to each other?

A. They differ as to the first ones. 4

Q. The differentials in the others differ from the differentials of the Cahill and the United States Sanitary?

A. Yes, sir.

Q. And do they differ from each other?

A. That is the discount allowed after the differentials, yes.

Q. You stated since June 1st, 1910, that you have bought

1 goods from the Standard Sanitary Manufacturing Company? A. Yes, sir.

Q. You stated some were bought on orders placed prior to June 1st? A. Yes, sir; they were.

Q. And were some on orders placed subsequent to June 1st? A. Some were.

Q. Is that true as to any other licensed sanitary enameled iron ware manufacturers?

A. We had no unfilled orders with any manufacturers other than the Standard Sanitary Manufacturing Company on June 6th.

2 Q. Did you order goods from the other licensed manufacturers subsequent to June 1st?

A. We ordered enameled goods—

Mr. GROSVENOR: Just answer that yes or no.

The stenographer then read the cross question.

A. We did.

Q. Which one? A. The Cahill Iron Works.

Q. Did you get goods from them? A. We did.

Q. Who else?

A. That is all the enameled goods we had on order
3 from these so-called licensed manufacturers.

Q. My question was—I don't think you heard it—did you order goods subsequent to June 1st from any other licensed manufacturers? A. We did.

Q. What companies did you order goods from?

A. The Cahill Iron Works.

Q. Did you get those goods? A. Yes, sir.

Mr. GROSVENOR: You mean by the word "goods" sanitary enameled iron ware?

THE WITNESS: Yes, sir.

4 BY Mr. NOBLE:

Q. Did you order any sanitary enameled iron ware from the Barnes Manufacturing Company? A. We did not.

Q. Did you order any sanitary enameled iron ware from the United States Sanitary Manufacturing Company?

A. We tried to.

Q. Did you order any goods from the Humphryes Manufacturing Company?

A. We tried to, from the New York warehouse, I remember. 1

Q. Did you order any from Weiskittel? A. We did not.

Q. You get your sanitary enameled iron ware goods from whom?

A. The Iron City and the J. M. Kohler and the Blairsville people.

Q. Are they large manufacturers of sanitary enameled iron ware goods? A. They are supposed to be.

Q. Are you familiar with the sanitary enameled iron ware business throughout the United States?

THE WITNESS: Do you refer to the size of their companies? 2

Q. Are you familiar with the output of the various manufacturers of sanitary enameled iron ware?

A. I am not.

Q. Are you familiar with what manufacturers are regarded in the trade as large manufacturers? A. I am.

Q. State who they are?

A. The largest manufacturer is supposed to be the Standard Sanitary Manufacturing Company.

Q. What is the next after that? 3

A. The L. Wolff Manufacturing Company of Chicago?

Q. And next after that?

A. The United States Sanitary Manufacturing Company.

Q. And the next after that?

A. A. Weiskittel & Sons Company.

Q. And the next after that?

A. The Humphryes Manufacturing Company.

Q. What is the next?

A. I couldn't say I know the grading after that.

Q. Where do the Iron City and Kohler Company come in? 4

THE WITNESS: The Iron City and Kohler?

Mr. NOBLE: Yes.

A. In proportion to the amount of goods produced, they—

Mr. NOBLE: Yes, the same as you have been grading these people?

1 A. Well, I shouldn't call either the Kohler people or the Iron City or the Blairsville Company as large as either the Standard Sanitary Manufacturing Company or the L. Wolff Company.

Q. But you would put them in immediately after The Standard and the Wolf? A. Yes.

Q. Now, what goods did you supply Hodge Brothers?

THE WITNESS: What goods did we supply Hodge Brothers?

Mr. NOBLE: Yes.

2 A. We supplied them with enameled iron lavatories and various other plumbing goods; the lavatories were the only sanitary enameled iron ware.

Q. Counsel for Government asked you whether or not your concern was known as the Central Plumbing Supply Company, and he asked you to enumerate the sanitary enameled ware articles you handled and what other articles you handled, and I understood you only to enumerate sanitary enameled iron ware; what other articles in the plumbing trade do you carry?

A. Earthen ware, lead papes, iron pipes; copper goods;
3 fittings; bath cocks; and other articles of the same type.

Q. Then, the sanitary enameled iron ware is only a part of your business? A. Only a part of the business.

Q. What make of goods was this sanitary enameled iron ware that you furnished Hodge Brothers as you referred to?

THE WITNESS: What, in place of those he ordered, do you mean?

Mr. NOBLE: Yes, read him the question.

The stenographer then read the cross question.

A. The Blairsville Enameled Iron Ware Company's
4 make of goods.

Q. Please state what the per cent. of the enameled iron ware business done by you in your business is to the total business you do in plumbing supplies?

A. About 33-1/3 per cent.

Q. Are you familiar with the business of other jobbers?

A. I cannot say that I am.

Q. So you could not give an estimate of those. Mr. Grosvenor asked you if Mr. Darling was the Special Agent

of the Department of Justice and you answered that he was. Will you tell me how you know that? 1

A. Mr. Darling presented his credentials to me and attached to his credentials was his photograph and I looked at the photograph and then at Mr. Darling and I was satisfied that he was the man in question.

Q. After he had presented you with his credentials and his photograph you then gave him these various papers which you have talked about? A. I did.

Q. What, in addition to showing you his credentials and photograph that you have referred to, did Mr. Darling do, if anything, as evidence of his authority or power before you exhibited these papers to him? 2

Mr. GROSVENOR: I object to this as being frivolous and immaterial and irrelevant; it is almost whimsical.

THE WITNESS: What was the question?

The stenographer then read the cross question.

A. Before I showed him the papers, I asked him what he wanted, what he came to see me about, and he informed me that he was at work on the case for the Government in reference to the enameled bath tub trust that the papers had been talking about, and asked me if we had signed a license agreement, and he asked me to show him any communications from the licensed manufacturers that we had, and I showed him all that I had. 3

Q. Is that all that took place before you showed him these various papers?

A. That is all that took place, as far as I can recall.

Q. You spoke of a contract which you were offered by McGuire, a plumber? A. Yes, Frank J. McGuire.

Q. Did that specify Standard Sanitary goods?

A. I have here a copy of the quotations which I made to Mr. McGuire and which speaks of Standard goods; you can read it if you wish to. 4

Q. I notice in this letter which you hand me and which is dated June 4, 1910, that you say, "We have figured Standard Sanitary goods and the architects can see these goods at the Standard Sanitary Manufacturing Company's show rooms." That was the first mention by you to McGuire of the Standard Sanitary goods?

A. For the Jennie Clarkson Home.

Q. So the first mention of these goods came from you to Mr. McGuire? A. Correct.

Q. Who are Peck Brothers mentioned here? Are they jobbers also? A. They are.

Q. What is the estimate referred to here as having been left with you?

A. The enameled bath tubs and wash stands that were to be used in the Jennie Clarkson Home for Girls.

Q. And on whose goods had they figured?

A. Their own.

Q. Are they manufacturers?

A. They specified their own figure numbers and we supposed they were their own goods.

Q. Are they manufacturers of sanitary enameled iron ware?

A. They manufacture brass goods, but I don't know anything about the enameled iron goods.

Q. What is their reputation in the trade as to that?

A. They haven't the reputation in the trade as being manufacturers of sanitary enameled iron goods.

Q. You say they have not? A. They have not.

Q. You supplied these goods for the Jennie Clarkson Home, you got them from the J. M. Kohler Sons Company?

A. We did.

RE-DIRECT EXAMINATION BY MR. GROSVENOR:

Q. Can you obtain the goods of the Standard Sanitary Manufacturing Company from them today?

A. We cannot.

Q. Have you made effort so to do? A. We have.

Q. To whom?

A. Through their New York office and through their New York warehouse.

Q. Can you obtain the goods today of the United States Sanitary Manufacturing Company? A. We cannot.

Q. Have you tried? A. We have.

Q. Can you obtain the goods of the Cahill Iron Works?

A. We cannot.

Q. Have you tried? A. We have.

Q. Can you obtain the goods of the Humphryes Manufacturing Company? A. We cannot.

Q. Have you tried? A. We have.

Q. Will you look at the list of these defendant corpora-

tions (indicating) and state whether or not you have tried to obtain the goods of any of those companies recently other than the names which you have just given? 1

A. The Barnes Manufacturing Company is the only additional manufacturer.

Q. Can you obtain their goods? A. We cannot.

Q. You have tried? A. We have tried.

Q. This letter from the Wheeling Enameled Iron Company, to which the counsel for defendant referred, that is a printed letter or a mimeographed letter?

A. Yes, that is a printed letter.

Q. All these contracts which you have testified were received by you on June 6, were printed? 2

A. Yes, sir; the contracts were printed with the exception of the notations for discounts; some were written in with the typewriter and some with pen and ink.

Q. That is the discount?

A. Yes, sir; that is in addition to the printed portion.

RE-CROSS EXAMINATION BY MR. NOBLE:

Q. You say you tried to get goods from the Standard Sanitary Manufacturing Company; when?

A. At various times; some times twice a day between the 10th and 11th of June until the first of October. 3

Q. What was the reason assigned for your not getting them?

A. Because we had not signed the license agreements; we were so informed over the telephone and our drivers were so informed when we sent orders to the warehouse.

Q. Were you personally informed?

A. Yes, sir; I was; over the the telephone.

Q. With whom did you talk?

A. Mr. Conran, when he came to our place and said I would be doing nothing illegal and if the Courts declared it was, that they would go back to the old way. 4

Q. He said he thought it was legal. A. Yes, sir.

Q. These other manufacturers to whom you have referred, did you have personal talks with them or letters?

A. We had personal talks with Mr. Kessell of the Barnes Manufacturing Company and Mr. Hutchinson of the Cahill Iron Works and Mr. Ham of the United States Sanitary Manufacturing Company.

Q. Do you sell to the plumbers? 1

A. To the plumbers; yes, sir.

Q. Where are your customers located?

A. In the metropolitan district and the different states of the Union.

Q. In New Jersey? A. Yes, sir.

Q. And Connecticut? A. Yes, sir.

Q. Massachusetts? A. Yes, sir; Massachusetts.

Q. Pennsylvania? A. Yes, sir.

Q. Do you receive orders from your customers located in these several states? A. Yes, sir.

Q. Have you shipped from your stock to them? 2

A. Yes.

Q. Previous to June 1st, 1910, whose goods did you handle, that is, manufactured by what company?

A. The different manufacturers.

Q. The Standard Sanitary Manufacturing Company?

A. Yes, sir.

Q. And the United States Sanitary Manufacturing Company?

A. That I could not tell you; I didn't do any of the detail work.

Q. Well, you have been subpœnaed to produce certain 3 documents? A. Yes, sir.

Q. Have you them with you?

A. I have them; I know very little about the details, though; I have done very little of the buying for some years; my son and others attend to that.

Q. How long has your Company been in this business?

A. About fifty years.

Q. As jobbers of plumbers supplies?

A. Yes, and manufacturers.

Q. Are you manufacturers of sanitary enameled iron ware? A. No, sir. 4

Mr. GROSVENOR: The witness has produced a letter dated June 28th, on the letterhead of the Standard Sanitary Manufacturing Company. I offer it as "Petitioner's Exhibit No. 215."

Letter referred to was then marked and filed as "Petitioner's Exhibit No. 215."

Mr. GROSVENOR: That letter reads as follows:

"Pittsburgh, U. S. A., June 28th, 1910.

"Messrs. Mayor, Lane & Co.,
New York, N. Y.

Gentlemen:—

"We are in receipt of your favor of the 23rd inst. answering ours of the 20th with further reference to placing your order for a number of items of enameled ware. We note your general remarks with reference to the same and would state that under the Resale arrangement it would be necessary for you to sign the Jobbers license agreement in order to secure licensed enameled ware. As outlined to you in our several communications there is very little difference if any in the present resale prices and former prices applying to our enameled ware and we trust that after carefully considering the matter you can see your way clear to favoring us with your signature, and are,

"Very truly yours,
"STANDARD SANITARY MFG. CO.,
"H. J. C. Heckman,
"HJHC' Mgr. Quotation Department."

Q. Have you signed any license agreement so called with any manufacturers of sanitary enameled iron ware?

A. We have not.

Q. Your Company is recognized as jobbers in the trade?

A. Yes, sir.

Q. Your name is in the book which contains the names of practically all the jobbers in the United States?

A. Yes, sir.

Q. You have produced under subpœna certain jobber's license agreements which are all similar to Government's Exhibit No. 11; can you state on or about what date you received those? A. Somewheres around June 10.

Mr. GROSVENOR: I offer these in evidence and asked that they be marked for identification as Exhibit No. 16.

Letters referred to were then marked as "Exhibit No. 16" for identification, offered by the Petitioner.

Mr. GROSVENOR: This exhibit for identification No. 16 contains a letter dated June 6th, 1910, from

the Humphryes Manufacturing Company with a jobber's license agreement attached to the letter and sentence in the letter containing the words, "It is necessary for you to execute the contract before we can sell you licensed sanitary enameled iron ware"; a letter and contract from A. Weiskittel and Son Company containing the sentence, "It is necessary for you to execute the contract before we can sell you licensed sanitary enameled ware," that letter was dated May 31st, 1910; the next was a letter from the Kerner Manufacturing Company dated June 6th, 1910, and containing the sentence, "It is necessary for you to execute these contracts before we can sell you licensed sanitary enameled ware"; a letter from McVay and Walker, dated June 4, 1910, with contract attached, the letter contains the sentence, "It is necessary for you to execute these contracts before we can sell you licensed sanitary enameled ware"; a letter from Wheeling Enameled Iron Company, dated June 6th, 1910, and containing the sentence, "It is necessary for you to execute the contract before we can sell you licensed sanitary enameled ware," attached thereto being a jobbers license agreement; a letter from the Cahill Iron Works, dated June 1, 1910, with contract attached, the letter containing the sentence, "It is necessary for you to execute the contract before we can sell you licensed sanitary enameled ware," and a letter with contract in duplicate from the Standard Sanitary Manufacturing Company, dated June 4, 1910, and containing the sentence, "It is necessary for you to execute the contract before we can sell you licensed sanitary enameled ware."

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By Mr. Grosvenor:

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Q. Here is a letter dated June 4, 1910, on the letterhead of W. A. Myler, Pittsburgh, Pennsylvania, addressed Mr. F. G. Ellis, Mayor, Lane & Company, New York, and signed by W. A. Myler; who is Mr. Ellis?

A. One of our buyers.

Mr. Grosvenor: I offer this letter as "Petitioner's Exhibit No. 216."

Letter referred to was then marked and filed as "Petitioner's Exhibit No. 216."

Mr. GROSVENOR: That letter reads as follows:

"June 4th, 1910.

"Mr. F. G. Ellis,
Mayor, Lane & Co.,
New York, N. Y.

"Dear Sir:—

"The re-sale arrangement for enameled ware will go into effect Monday next June 6, 1910. The special rebates which you have been enjoying from our company will then be withdrawn and I will send you as soon as possible check to cover rebates due you on goods shipped to and including Saturday June 4th. The terms upon which the manufacturers have agreed to sell to the jobbers under the new plan will be forwarded to you promptly and will, I believe from what I know, be satisfactory to you.

"Thanking you for the confidential relations that have existed between us in the past, and trusting that our business relations may be equally as satisfactory in the future, beg to remain,

Yours truly,

W. A. Myler."

Mr. GROSVENOR: You have produced the following letters also: A letter on the letterhead of the Humphryes Manufacturing Company, dated June 6, 1910, and signed by Mr. Laing of that Company; also a letter from the McCrum-Howell Company, dated June 3, 1910, and signed by Howard T. Gates, Secretary, and a letter from the Cahill Iron Works, dated June 4, 1910, and signed by that Company. I offer those letters as "Petitioner's Exhibits No. 217, 218, and 219" respectively.

Letters referred to were then marked and filed as "Petitioner's Exhibit Nos. 217, 218 and 219" respectively.

Mr. GROSVENOR: Those letters read as follows:

"New York, N. Y., 6/6/10. 1

"Gentlemen:—

"We hereby advise you of the withdrawal of all previous quotations on Enamelled Ware.

"Yours very truly,

"THE HUMPHRYES MFG. CO.,

"A. J. Laing, Mgr."

"New York, June 3rd, 1910.

"Effective on the morning of June 6th, 1910, all prices on RICHMOND Enameled Iron Ware are hereby withdrawn. New prices will be furnished on application. 2

Yours very truly,

Howard T. Gates,

"HTG-EMT" SECRETARY

"Chattanooga, Tenn. U. S. A.,

June 4, 1910.

"TO THE TRADE:—

"Effective this date all previous quotations, discounts and net prices are withdrawn and are superseded by the price list dated June 1st, on "Licensed Sanitary Enameled Iron Ware, which you will receive from Edwin L. Wayman, Licensor. 3

"You will note by referring to this price list that we have changed our lists on a number of fixtures. We will advise you just what these changes are in a few days, and will also send you a sheet giving list of our plate numbers and page of price list on which each is shown.

Yours truly,

"HWP-W THE CAHILL IRON WORKS."

Mr. GROSVENOR: The witness has produced certain circulars on the letterhead of Edwin L. Wayman: They are dated respectively May 28th, June 3rd, and 4 July 23rd, and they are all addressed "To The Jobbing Trade" and are printed letters; I offer them all as one exhibit for identification and ask that they be numbered 17.

Letters referred to were then marked and filed as "Exhibit No. 17" for identification, offered by the Petitioner.

CROSS EXAMINATION BY Mr. NOBLE:

Q. You do not know what manufacturers your Company

1 did business with previous to June 1st? A. I don't know.

Q. You don't know what companies you do business with now? A. No.

Q. You say your Company did not sign any of these license agreements? A. Yes, sir.

Q. Did you talk with anybody about signing them?

A. Not individually; no, sir.

Q. Who in your Company decided that you would not sign? A. My son.

Examination concluded and signing of deposition
2 waived by agreement of counsel for the respective parties.

VICTOR A. HARDER, JR., a witness of competent age, produced on behalf of the Petitioner, being first duly sworn, testified as follows.

DIRECT EXAMINATION BY Mr. GROSVENOR:

Q. Mr. Harder, you are connected with the firm of Mayor, Lane and Company? A. Yes, sir.

Q. You are the son of the last witness? A. Yes, sir.

3 Q. You are in actual charge of that business?

A. I am the Secretary.

Q. With what companies did you do business with regard to sanitary enameled iron ware previous to June 1st, 1910?

A. With the Standard Sanitary Manufacturing Company; A. Weiskittel & Son Company; the Cahill Iron Works; Day-Ward Company; Humphryes Manufacturing Company; Kerner Manufacturing Company; McVay & Walker Company; the McCrum-Howell Company; the United States Sanitary Manufacturing Company;—we did not do very muh business with the United States Sanitary
4 Company—the Wheeling Enameled Iron Company.

Q. Turn to page 10 of the Petition and see if you did business with any of the companies mentioned there?

A. Yes, we did.

Q. Name them?

A. J. M. Kohler Sons Company, Sheboygan; the Iron City Sanitary Manufacturing Company; the Blairsville and the Clymer Manufacturing Companies.

Q. What percentage of the business done by you in the

sanitary enameled iron ware was done by these companies you first named, that is those on pages 3 and 4 of the Petition? A. Well, about fifty per cent. 1

Q. Are you able to get the goods of the Standard Sanitary Manufacturing Company today from them?

A. No, sir.

Q. Have you tried? A. We have.

Q. Are you able to get the goods of A. Weiskittel & Son Company? A. No.

Q. You have tried?

A. No, I don't think we have tried with Weiskittel.

Q. You received that letter which has been introduced in evidence from them? A. Yes, sir; we did. 2

Q. Are you able to get the goods of any of these companies who are on pages 3 and 4 of the Petition?

A. No, we are not.

CROSS EXAMINATION BY Mr. NOBLE:

Q. How much of the total of your business does the sanitary enameled iron ware portion constitute?

A. Without having any figures I would say from fifteen to twenty per cent.

Q. You are engaged in the jobbing of plumbers supplies? A. Yes, sir. 3

Q. And you supply all sorts of things besides sanitary enameled iron ware? A. We do, sir.

Q. Are you familiar with the standing in the trade of the various companies who manufacture sanitary enameled iron ware?

A. Only from hearsay; I have only been through two plants, that is the Standard Sanitary Manufacturing Company and Dawes and Myler, and that was four or five years ago, when I was in Pittsburg.

Q. In the trade, what is the reputation as to size of the various manufacturers? 4

A. The Standard Sanitary Manufacturing Company has always been considered the largest.

Q. And the next largest?

A. Wolff was always considered a very large manufacturer.

Q. Who else, Kohler?

A. Cahill Iron Works, I believe, and the Iron City Company.

1 Q. And the Blairsville?
A. I do not consider them as such a large concern.
Q. The Clymer Company?
A. I don't think they are so large.
Q. They are bigger than some of these others?
A. Oh, yes, sure.

Examination concluded and signing of deposition waived by agreement of counsel for the respective parties.

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2 JOHN G. FLECK, a witness of competent age, produced on behalf of the Petitioner, being first duly sworn, testified as follows.

DIRECT EXAMINATION BY MR. GROSVENOR:

Q. What is your business?
A. Plumbers supply business.
Q. Of what company? A. Fleck Brothers Company.
Q. Where are you located? A. Philadelphia.
Q. You deal as jobbers in sanitary enameled iron ware?
A. We do.
3 Q. You sell to the jobber and to the plumber?
A. We do.
Q. Where are your customers located?
A. All over the country.
Q. Largely outside of the State of Pennsylvania?
A. No, principally in the State of Pennsylvania.
Q. What other states outside of Pennsylvania?
A. I guess every state in the Union.
Q. Do you receive orders from these plumbers and then ship from your warehouse? A. Yes, we do.
Q. And do you also send orders to the factories?
A. Yes, sir; for direct shipment.
4 Q. And they make shipment to the customers?
A. Yes, sir.
Q. Prior to June 1st, 1910, with what manufacturers of sanitary enameled iron ware did you do business?
A. The Standard Sanitary Manufacturing Company and the Cahill Iron Works.
Q. State where they are located?
A. Standard Sanitary Manufacturing Company is in Pittsburg and the Cahill Iron Works in Chattanooga, Ten-

nessee, and the United States Sanitary Manufacturing Company in Monaca; I think that is all of them. 1

Q. You have been subpœnaed to produce certain papers and contracts; have you them with you? A. I have.

Mr. GROSVENOR: The witness has produced a letter on the letterhead of the Standard Sanitary Manufacturing Company, Louisville, Kentucky, July 13, 1910, addressed to Fleck Brothers, Philadelphia, Pennsylvania. I offer that in evidence as "Petitioner's Exhibit No. 220."

Letter referred to was then marked and filed as "Petitioner's Exhibit No. 220." 2

Mr. GROSVENOR: That letter reads as follows:

"Louisville, Ky., July 13, 1910.

"Fleck Bros.,
Philadelphia, Pa.

"Gentlemen:—

"In going over the list of names sent in by Mr. E. L. Wayman, and which embraces all the jobbers who have signed the re-sale contract on Enameled Ware, I fail to find you among them. I regret to see that 3
you have so far not seen fit to join with us.

We need your support, as your house is one of the largest and most influential in the business, and has always been a large buyer of Enameled Iron Ware. The plan as proposed will be of great benefit to the jobber, and will insure a satisfactory margin of profit on a line that has heretofore been fiercely competitive, and on which the profit in many instances has been cut down to almost nothing.

We will greatly appreciate your support, and hope you will send us your signed contract. I will be 4
obliged to you if you will favor me with your views on the subject.

Awaiting your reply, I am,

Yours very truly,

Theo. Ahrens,
"A. President."

Q. Now, that letter refers to a signed contract; did you receive about June 6th, certain contracts?

A. Yes, sir; they are lying there in front of you.

Mr. GROSVENOR: You have produced contracts and letters as follows; which I offer as Exhibit for identification No. 18: A letter from the United States Sanitary Manufacturing Company, dated May 31st, 1910, addressed to your Company, containing the sentence, "It is necessary for you to execute these contracts before we can sell you licensed sanitary enameled ware"; attached thereto was a contract or jobber's license agreement; also a letter from the Standard Sanitary Manufacturing Company, with contract attached, dated June 6th, 1910, and containing the sentence, "It is necessary for you to execute both of these contracts before we can sell you licensed sanitary enameled ware"; a letter from McVay & Walker, dated June 4th, 1910, addressed to your Company and containing the sentence, "It is necessary for you to execute these contracts before we can sell you licensed sanitary enameled ware"; attached thereto were contracts in duplicate also. A letter from the Wheeling Enameled Iron Company, dated June 6th, 1910, and containing the sentence, "It is necessary for you to execute these contracts before we can sell you licensed sanitary enameled ware"; a letter and contract from the Standard Manufacturing Company, dated June 4th, 1910, and addressed to your Company and containing the sentence, "It is necessary for you to execute these contracts before we can sell you licensed sanitary enameled ware"; letter and contract from the Humphryes Manufacturing Company, dated June 6th, 1910, and addressed to your Company, containing the sentence, "It is necessary for you to execute these contracts before we can sell you licensed sanitary enameled ware"; also a contract dated June 6th, from the National Sanitary Manufacturing Company; also a contract dated June 1st, 1910, from the Cahill Iron Works.

Q. Was there a letter with those two last contracts?

A. Yes, sir; of the same character.

Q. Here are certain contracts dated October 15th, from the Day-Ward Company; did they have a letter with them?

A. Yes, sir; I think that applies to something else. 1

Q. Was it suggested at the time that you sign the contracts?

A. No, sir; simply the letter received as you have it there.

Q. Has your Company executed a contract with any of the licensed manufacturers? A. No, we have not.

Q. Have any of the manufacturers suggested to you that you should?

A. Yes, they have requested it quite a number of times.

Q. Have you had any interviews with any of the representatives of the Standard Sanitary Manufacturing Company respecting that matter? A. I have. 2

Q. Can you give the time?

A. Well, there have been many of them and the subject came up so often that I really couldn't give the times.

Q. You have persistently refused to sign it?

A. I refused to sign; there were very few requests, but a great many interviews.

Q. What kind of requests? Written?

A. No, verbal requests.

Q. Was there an interview in June about the subject, during the latter part of the month? 3

A. Why, yes, we had interviews right along.

Q. Were you present at a meeting of jobbers and others on June 29, 1910, in Philadelphia? A. Yes, I was.

Q. Where was that meeting?

A. At the Bellevue-Stratford.

Q. Who were present? A. Mr. Wayman, Mr. Torrance,—

Q. What is his full name? A. Francis J. Torrance.

Q. He is the Vice-President of the Standard Sanitary Manufacturing Company? A. Yes, sir.

Q. Who else?

A. Mr. Wayman, Mr. John A. Kelly, of the Iron City Manufacturing Company. 4

Q. Is that a licensed manufacturer?

A. No, he is independent; and Mr. Bardman of Ronalds and Johnson, New York City, and Mr. Thorndyke of the F. W. Webb Company, Boston.

Q. Are they jobbers of sanitary enameled iron ware?

A. Yes, sir.

Q. Who else?

A. Mr. Charles Perry, of the Standard Sanitary Manufacturing Company; Mr. F. W. Webb, of Boston for a short time, I think, and Mr. J. D. Johnson, of Philadelphia, I think for a short time.

Q. Who called that meeting?

A. The meeting was called by Mr. Wayman.

Q. By letter?

A. No, by telephone; my message was received by telephone. I do not know about the balance.

Q. When did you meet?

A. My recollection is about the 28th of June.

Q. What time of the day, I mean?

A. About ten-thirty in the morning.

Q. How long were you together?

A. We were in session until about half past eight in the evening.

Q. What was the principal subject of the conference?

A. The re-sale proposition in general.

Q. You mean the license agreement?

A. Yes, sir; Mr. Kelly was there of the Iron City Manufacturing Company and he did not want us to sign the agreement, and Mr. Torrance and Mr. Wayman wanted us to sign it, and there was a general discussion pro and con.

Q. Did you have before you the Government's Exhibit No. 11, which is the Jobber's License Agreement?

A. No, I don't think that we did.

Q. That was discussed, however?

A. No, only whether it would be advisable for us to sign it or not.

Q. Was it suggested by Mr. Torrance that you should sign? A. Yes.

Mr. NOBLE: The Witness said that Mr. Wayman and Mr. Torrance asked him to sign it and Mr. Kelly asked him not to. He has already testified to that.

Mr. GROSVENOR: I will go into that as often as I please.

Mr. NOBLE: I will state that counsel for Government's statement is not in reply to the objection which I made.

BY MR. GROSVENOR:

Q. Returning to this subject, Mr. Fleck, I call your

attention to the 10th paragraph of Government's Exhibit No. 11, which reads as follows: "The purchaser also agrees during the life of this contract, not to purchase, sell, advertise, solicit orders for, or in any way handle or deal in sanitary enameled iron ware of any manufacturers not licensed under the letters patent enumerated herein, except with the express written permission of the Licensor. Breach of any of the provisions of this agreement, or any failure to maintain and observe the prices, rules or regulations, shall give the Company, or E. L. Wayman, owner of the patents hereinbefore enumerated, an option to immediately cancel this contract, all unfilled orders and to withhold all rebates; and the purchaser is hereby expressly put on notice that in case of any such failure he cannot thereafter obtain sanitary enameled iron ware manufactured under the letters patent above enumerated from any of the licensed manufacturers." Was that provision of the contract considered and the subject matter referred to? 1 2

THE WITNESS: At this meeting?

Mr. GROSVENOR: Yes.

A. Yes, sir.

Q. What was said about it?

A. Well, I cannot recollect any definite statement or conversation about it. It was an all day session and there was a whole lot said pro and con. 3

Q. Pro and con on this provision?

A. No, whether we should sign this Wayman agreement or not; whether we should come in or stay out; that special paragraph that you read was not discussed as a paragraph or as a statement.

Q. But the subject matter was discussed?

A. The subject matter was discussed during the meeting.

Q. Did you ask if you would be allowed to buy and sell the goods of manufacturers not licensed, if you signed the agreement? A. We did. 4

Q. What were you told? A. That we could not.

Q. By whom? A. Mr. Wayman.

Q. Anybody else? A. No.

Q. Did you sign? A. No.

Q. Mr. Fleck, your Company has been jobbers how long of sanitary enameled iron ware? A. About twenty years.

Q. You are recognized as jobbers? A. We are.

Q. And your name appears in the book containing the names of the principal jobbers in the United States, which is known as Petitioner's Exhibit No. 30? (Indicating.)

A. Yes, sir.

CROSS EXAMINATION BY Mr. NOBLE:

Q. You are familiar generally with the business of sanitary enameled iron ware over the country, are you not?

A. Yes, sir.

Q. Is your Company a corporation?

A. No, we are a co-partnership.

Q. And you have branches in various cities?

A. No, just in Philadelphia.

Q. You sell goods, however, all over the country?

A. Yes, all over the country.

Q. Do you deal generally in plumbing supplies?

A. We do.

Q. About what percentage of your business would you say the sanitary enameled iron ware constituted?

A. I would say from about twenty to twenty-five per cent.

Q. What is the relative standing in the trade, Mr. Fleck, in point of size of manufacture of the companies like the Iron City or the J. M. Kohler Sons Company?

A. Well, the Standard Sanitary Manufacturing Company, of course, are the top of the heap, and I should say that Wolff comes next and third I would place the Iron City or the United States Sanitary Manufacturing Company and Kohler and Cahill and the Wheeling Enameled Iron Company and the Blairsville Company, I guess, and Weiskittel would come in about eleven or twelve.

Q. That is about the order in which you would place those which you have mentioned? A. Yes, sir.

Q. Now, this meeting of June 28th, or 29th, about which you testified, you said you had a meeting practically all day; you were discussing the license agreement which Mr. Wayman offered you?

A. Yes, sir; not so much the agreement as whether we would go into the thing or not.

Q. As to whether you would sign the agreement which Mr. Wayman offered you? A. Yes, sir.

Q. The real subject was whether you would or would not sign the licenses? A. Yes, sir.

RE-DIRECT EXAMINATION BY Mr. GROSVENOR: 1

Mr. GROSVENOR: I offer this letter in evidence which is dated August 15th, 1910, and addressed to Messrs. Fleck Brothers, 46 North Fifth Street, Philadelphia, Pennsylvania, from the Cahill Iron Works, and ask that it be marked as "Petitioner's Exhibit No. 221."

Letter referred to was then marked and filed as "Petitioner's Exhibit No. 221."

Mr. GROSVENOR: That letter reads as follows:

"Chattanooga, Tenn, U. S. A., 2

August 15, 1910.

"Messrs. Fleck Brothers, Co.,
46 North Fifth St.,
Philadelphia, Pa.

"Gentlemen:—

"Yours of the 12th to hand.

"We want you to understand that we want all the business we can get and it is unpleasant to us to hesitate the least bit in filling any order a reputable dealer like yourselves sends in to us. 3

"At the same time in accepting the license we are expected to live up to the terms of same.

"We note you say this order was taken prior to the time the resale arrangement went into effect. We will therefore ship the same immediately.

"It will be advisable until such time as you can see your way clear to sign the jobber's license agreement to advise your salesmen not to take orders for our goods, as it will save us the embarrassment of having to decline them.

"We of course do not wish you to quote us as having broken this rule—but are filling the order on the strength of your statement that the order was taken prior to the time the resale arrangement went into effect. 4

"Respectfully yours,
"THE CAHILL IRON WORKS.
Per F. H. C.,
President."

"FHC/P

1 By Mr. Grosvenor:

Q. Are you able to get the goods of the Cahlll Iron Works to day?

A. No, that is, we cannot get them directly; we can purchase them from somebody on the inside.

Q. You mean you cannot get them from the manufacturer? A. No, sir; we cannot.

Q. Indirectly you mean you buy from other jobbers?

A. By through a third jobber.

Q. What price do you pay him? A. The resale prices.

Q. That is the price at which the jobber has to sell the
2 plumber? A. Yes, sir.

Q. That is, you, a jobber, if you buy—

A. (Interrupting): If we buy, we pay the same as the plumber pays.

Q. But your trade is with plumbers? A. Yes.

Q. This conference which began in the morning and lasted until eight o'clock, were you all present during the entire conference? Was Mr. Torrance there the entire time?

A. No, there were two rooms there and some times Mr. Torrance would be in one room and some times in another;
3 and some times Mr. Kelly would talk to the jobbers and some times Mr. Wayman would come in.

Q. Weren't you ever all together?

A. I think we were together at the start and at the finish.

Q. Do you mean you were together in mind or in place?

A. In place.

Q. During the time you were apart in place, how were you doing it?

A. The jobbers were conferring among themselves and with Mr. Kelly at times, and then some times they would
4 confer and call in Mr. Wayman and Mr. Torrance with Mr. Wayman.

Q. Then Kelly was trying to keep you from signing?

A. Yes.

Q. And Wayman and Torrance were trying to get you to sign? A. Yes.

Re-cross examination by Mr. Noble:

Q. You say you can get goods, sanitary enameled iron ware goods through a third party? A. Yes, sir.

Q. What is the name of the firm that you deal with in that manner? 1

A. If it is not necessary, I would rather not give that name, but I will if it is necessary.

Mr. NOBLE: Well, I will not press the witness.

Examination concluded and signing of deposition waived by agreement of counsel for the respective parties.

FRED H. BOARDMAN, a witness of competent age, produced on behalf of the Petitioner, being first duly sworn, testified as follows. 2

DIRECT EXAMINATION BY Mr. GROSVENOR:

Q. What is your business?

A. Manufacturers and jobbers of plumbers' supplies.

Q. Where are you located?

A. I am located in Brooklyn.

Q. What company are you connected with?

A. Ronalds & Johnson Company.

Q. What is your position? 3

A. I am Secretary and General Manager.

Q. And the business of Ronalds & Johnson is jobbers of plumbing supplies? A. Manufacturers and jobbers.

Q. As jobbers of plumbing supplies you handle sanitary enameled iron ware? A. Yes, sir; we do.

Q. Do you manufacture sanitary enameled iron ware?

A. We do not.

Q. As far as sanitary enameled iron ware is concerned, you only act as jobbers? A. Yes, sir.

Q. Ronalds & Johnson have stores in what places?

A. Camden and Brooklyn and New York City and—

Q. Do you sell to the plumbers? A. Yes, sir. 4

Q. That is the sanitary enameled iron ware?

A. Yes, sir.

Q. Where are your customers located?

A. We sell everywhere; my trade is located principally in Hoboken, Jersey City and Philadelphia.

Q. You mean by your business, your branch?

A. Yes, sir.

Q. And your customers are located where?

A. In Union Hill and Jersey City, Hoboken and Philadelphia.

Q. Do you extend up into Connecticut?

A. Very little.

Q. And the Philadelphia branch?

A. Handles the South, and Camden and New Jersey.

Q. Your customers are located in other States than New York, New Jersey and Pennsylvania? A. Yes, sir.

Q. Do you ship orders from your store rooms to the plumbers?

A. Yes, sir; and we ship direct from the manufacturer to the plumber.

Q. You send your order to the manufacturer and he ships direct to the plumbers? A. Yes, sir.

Q. And you also ship from your warehouse?

A. Yes, sir.

Q. You have produced here certain contracts not executed but in blank, being similar to Government's Exhibit No. 11. About what time were these received by you?

A. Some time in June; they are dated, I think.

Mr. GROSVENOR: I offer these in evidence as Exhibit No. 19 for identification, and ask that it be marked. The first is a letter and contracts from McVay & Walker dated June 4, 1910, the letter containing the sentence, "It is necessary for you to execute these contracts before we can sell you licensed sanitary enameled ware"; a letter from McCrum-Howell Company dated June 6th, 1910, with the contracts attached containing the sentence, "It is necessary for you to execute these contracts before we can sell you licensed sanitary enameled ware"; a letter from the Humphryes Manufacturing Company dated June 6th, 1910, with contracts attached containing the sentence, "It is necessary for you to execute these contracts before we can sell you licensed sanitary enameled ware"; a letter from the Cahill Iron Works, dated June 1, 1910, with contracts attached, containing the sentence, "It is necessary for you to sign these contracts before we can sell you licensed sanitary enameled iron ware"; a letter and contracts from the Wheeling Enameled Iron Company, dated June 6th, 1910, containing the

sentence; "It is necessary for you to execute these con- 1
tracts before we can sell you licensed sanitary enameled iron ware"; a letter and contracts attached from the Kerner Manufacturing Company, dated June 3rd, 1910, and containing the sentence, "It is necessary for you to execute these contracts before we can sell you licensed sanitary enameled iron ware"; a letter from the United States Sanitary Manufacturing Company, with contracts attached, signed by A. H. Cline, Jr., Secretary, dated May 31, 1910, and containing the sentence, "It is necessary for you to execute these contracts before we can sell you 2
licensed sanitary enameled ware"; and a letter from the Standard Sanitary Manufacturing Company, dated June 4, 1910, with contracts attached, the letter containing the sentence, "It is necessary for you to execute these contracts before we can sell you licensed sanitary enameled ware."

Papers referred to were then marked and filed as "Exhibit for Identification No. 19."

Mr. GROSVENOR: The witness has produced here a letter from the Standard Sanitary Manufacturing Company, dated June 11, 1910, and signed by F. J. 3
Torrance, which I offer in evidence as "Petitioner's Exhibit No. 222."

Letter referred to was then marked and filed as "Petitioner's Exhibit No. 222."

Mr. GROSVENOR: That letter reads as follows:

"Pittsburg, U. S. A., June 11, 1910.

Subject—Your order b-1380, our No. 24171-D.

"Messrs. Ronalds & Johnson Co.,
New York, N. Y.

"Gentlemen:— 4

"Referring to the above mentioned order dated May 31st and which reached us June 1st, we regret to advise that the same came to hand too late to enable us to do much with it on the basis of the special low prices of May 18th. However, we are furnishing you an assorted car of tubs at those prices, invoice for which under date of June 4th you will receive shortly from our Standard Works.

1 "As the re-sale arrangement is now operative, we would like to know if you desire us to cancel the balance of the order, B-1380, or make shipment of same at regular prices.

"Yours very truly,

"F. J. Torrance,

"FJT per B."

Q. Mr. Boardman, your Company, that is Ronalds & Johnson, is recognized as jobbers in the trade? A. Yes, sir.

Q. Your name appears in this book which is known as Petitioner's Exhibit No. 30? A. Yes, sir.

2 Q. Does that book contain the names of most of the jobbers in the United States? A. It is supposed to.

Q. Are you able to get the goods from the Standard Sanitary Manufacturing Company today? A. Not directly.

Q. Explain what you mean by that?

A. We buy from other jobbers.

Q. At what prices?

A. Jobbers prices and what we may be able to get later on.

Q. That is the jobbers price to the plumbers?

A. Yes, sir.

3 Q. That is, you jobbers buy from other jobbers at plumbers prices?

A. Yes, sir; but we may be able to get some discount later on.

Q. From whom? A. From whom we buy.

Q. And you are jobbers and sell to plumbers?

A. Yes, sir.

Q. Look at this list of defendant corporations and state with what companies your Company did business prior to June 1st, 1910?

4 A. The Standard Sanitary Manufacturing Company; the A. Weiskittel & Son Company; Barnes Manufacturing Company; Cahill Iron Works; Day-Ward Company; the Kerner Manufacturing Company; McVay & Walker; the McCrum-Howell; the United States Sanitary Manufacturing Company; the L. Wolff Manufacturing Company; and I think that is all.

Q. Are you able to get the goods directly from any of these companies today? A. We are not.

Q. Were you present at that meeting in Philadelphia about which Mr. Fleck testified? A. I was. 1

Q. Who called you there?

A. Why, we went at the request of Mr. Wayman.

Q. Who do you mean by "we"?

A. Mr. Fleck and myself.

Q. Did he telephone to you or write to you?

A. The original request was made verbally, person to person; we had a meeting, if I remember rightly, when we discussed the matter.

Q. Where was that meeting? A. In New York City.

Q. You and Mr. Wayman had the meeting? 2

A. Mr. Fleck, Mr. Wayman had a meeting at the Manhattan Hotel in New York City.

Q. Was anybody else there? A. I think not.

Q. Go on?

A. We simply discussed the matter of getting together, and we telephoned Mr. Torrance in Pittsburg.

Q. You telephoned to him?

A. Mr. Wayman telephoned; I talked to Mr. Torrance.

Q. On the phone? A. On the phone.

Q. About having a conference?

A. Yes, and at that meeting it was suggested that we should meet in Pittsburgh, but afterwards we were telephoned where to meet; I was telephoned to, I mean. 3

Q. By Mr. Wayman?

A. I don't know if it was Mr. Wayman or Mr. Fleck.

Q. When you telephoned from here to Mr. Torrance, what was the subject of the discussion?

A. Well, the main discussion was getting together and talking matters over.

Q. Do you mean having a conference? A. Yes, sir.

Q. At the meeting in Philadelphia, were you there from the morning until the night? 4

A. I was there from the morning until eight o'clock.

Q. You heard Mr. Fleck's testimony? A. Yes.

Q. Does his account agree with your views of the matter? A. Yes, practically so.

CROSS EXAMINATION BY Mr. NOBLE:

Q. You bought largely from the Iron City Manufacturing Company previous to June 1st, did you not? A. Yes.

1 Q. You still buy from them? A. Yes.
Q. Do you also buy from Kohler and Company?
A. Some very little.
Q. Do you buy from the Blairsville people?
A. Very little.
Q. From the Clymer Manufacturing Company?
A. Not since the first of June.
Q. The Clymer Manufacturing Company is not a licensed manufacturer?
A. I believe they are not running; I am not sure about that.
2 Q. You do not buy anything from them, then?
A. No, sir.
Q. Do you buy from Louis Lipp of Cincinnati?
A. No, not enameled iron ware.
Q. Does your trade extend out to the Pacific Coast?
A. Not in enameled iron ware.
Q. So you do not buy from the Washington Iron Works in Los Angeles? A. No.
Q. You are able to buy goods from the licensed manufacturers, I understood you to say, indirectly; is that correct? A. Yes, sir.
3 Q. Now, this meeting which Mr. Grosvenor has asked you about, which took place in Philadelphia was brought about by whom? A. Mr. Wayman.
Q. Was it Mr. Wayman who called up Mr. Torrance from the Manhattan Hotel, in Pittsburgh? A. It was.
Q. It was Mr. Wayman who asked you to come to the meeting? A. Originally, yes, sir.
Q. And it was Mr. Wayman who asked Mr. Torrance to come to the meeting over the telephone, as you have testified? A. Yes.
Q. The Counsel for the Government did not ask you
4 specifically about the Philadelphia meeting, so I will ask you just one question: I understood you to mean by your answer to their question the subject matter discussed at the Philadelphia meeting was, was it not, the signing by you and some other jobbers of the license agreement between you and Mr. Wayman? A. That was it; yes, sir.
Q. Does your Company do business in plumbing supplies in general? A. We do.

Q. What percentage of your business would you say the sanitary enameled iron ware business constituted?

A. I suppose ten or twelve per cent.

RE-DIRECT EXAMINATION BY Mr. GROSVENOR:

Q. You testified in your direct examination that in the Manhattan Hotel you talked with Mr. Torrance over the phone? A. Yes, sir.

Q. At Pittsburgh? A. Yes, sir.

RE-CROSS EXAMINATION BY Mr. NOBLE:

Q. Mr. Wayman called him up? A. Yes, sir.

Q. And Mr. Wayman asked you to talk to him on the telephone, is that correct? A. Yes, sir.

Examination concluded and signing of deposition waived by agreement of counsel for the respective parties.

1 HERBERT W. THORNDYKE, a witness of competent age, produced on behalf of the Petitioner, being first duly sworn, testified as follows.

DIRECT EXAMINATION BY Mr. GROSVENOR:

Q. What is your business?

A. I am Treasurer of the F. W. Webb Manufacturing Company.

Q. Located where? A. Boston.

Q. What is their business?

A. Manufacturers and jobbers of plumbers' supplies.

2 Q. They handle sanitary enameled iron ware?

A. Yes, sir.

Q. Bathtubs and sinks? A. Yes, sir.

Q. You sell to the plumbers? A. Yes, sir.

Q. And buy from the manufacturer? A. Yes, sir.

Q. What states do you do business in?

A. Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut and New York States.

Q. You ship from your store house in Boston to these plumbers located in these various states which you have mentioned? A. Yes.

3 Q. And you send their orders to the manufacturers and have them shipped from the manufacturers to the customers? A. Yes, sir.

Q. Your Company is recognized as a jobber in the trade? A. Yes, sir.

Q. You appear in that book which is known as Petitioner's Exhibit No. 30? A. Yes, sir.

Q. Does that contain the names of the principal jobbers in the United States? A. As far as I know.

Q. Have you executed the license agreement?

A. No, sir.

4 Q. You were subpœnaed to produce certain papers; have you them with you?

A. I have no letters at all; there are just contracts and the letters that accompanied them.

Mr. GROSVENOR: I offer these letters and contracts as Exhibits No. 20 for identification.

Letters referred to were then marked and filed as "Exhibit No. 20" for identification, offered by the Petitioner.

Q. These are similar to Government's Exhibit No. 11, 1
that is, these contracts? A. Yes.

Q. And these were received by you on or about what time? A. Early in June.

Mr. GROSVENOR: There is a letter here from the United States Sanitary Manufacturing Company, dated May 31, 1910, and addressed to the F. W. Webb Manufacturing Company, signed by the United States Manufacturing Company, A. H. Cline, Jr., containing the sentence, "It is necessary for you to execute these contracts before we can sell you licensed sanitary enameled ware," with a contract attached thereto; also a letter from the Standard Sanitary Manufacturing Company, dated June 4, 1910, addressed to the Webb Company and containing the sentence, "It is necessary for you to execute both these contracts before we can sell you licensed sanitary enameled ware"; attached to said letter were the contracts from the Standard Sanitary Manufacturing Company; also a letter from the Kerner Manufacturing Company, dated June 6, 1910, and containing the sentence, "It is necessary for you to execute both of these contracts before we can sell you licensed sanitary enameled ware", with the contract attached thereto; also a letter and contract from the Day-Ward Company, dated July 8, 1910, the letter containing the sentence, "It is necessary for you to execute these contracts before we can sell you licensed sanitary enameled ware"; a letter from the Cahill Iron Works, dated June 1st, 1910, containing the sentence "It is necessary for you to execute these contracts before we can sell you licensed sanitary enameled ware"; a letter from McVay & Walker, dated June 4, 1910, with contract attached, the letter containing the sentence, "It is necessary for you to execute these contracts before we can sell you licensed sanitary enameled ware"; also a letter from the Wheeling Enameled Iron Company, with contract attached, the letter containing the sentence, "It is necessary for you to execute these contracts before we can sell you licensed sanitary enameled ware"; and a letter and contract from the Humphryes

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3

4

1 Manufacturing Company, dated June 6, 1910, and containing this sentence, "It is necessary for you to execute these contracts before we can sell you licensed sanitary enameled ware."

Q. Has your Company executed a license agreement with any of these companies? A. No.

Q. Look at this list of corporation defendants and state which of those companies, if any, your Company did business with, prior to June 1st, 1910?

A. The Standard Sanitary Manufacturing Company; the Kerner Manufacturing Company and the United States
2 Sanitary Manufacturing Company.

Q. Are you able to get their goods today?

A. Not directly.

Q. When you say "not directly," you mean what?

A. That we cannot purchase them directly from the manufacturers of those goods.

Q. You buy them, however, from the jobbers; is that right? A. Yes, sir.

Q. At what prices? A. Resale prices.

Q. That is, you buy them the same as any plumber?

A. Yes, sir.

3 Q. Your business is what? A. Selling to plumbers.

Q. Were you present at this Philadelphia meeting that Mr. Fleck has testified about? A. Yes, sir.

Q. Were you there all day? A. Yes, sir.

Q. Was the account which he gave of that meeting, substantially correct as you remember it? A. Yes, sir.

Q. Have you seen Mr. Torrance at any other time since June 1st, in reference to executing a license agreement?

A. No, sir; I have seen him but not in reference to that matter.

4 CROSS EXAMINATION BY Mr. NOBLE:

Q. You are a large purchaser from the Iron City Manufacturing Company, are you not? A. Yes, sir.

Q. And have been for a number of years?

A. For several years past.

Q. Who else do you buy from at the present time besides the Iron City Manufacturing Company?

A. A little from Kohler.

Q. And those are the only manufacturers from whom you buy at the present time? A. Yes, sir. 1

Q. Yet you do buy goods from the so-called licensed manufacturer indirectly? A. Yes.

Q. What percentage of your business would you say that the sanitary enameled iron business constituted?

A. About fifteen per cent.

Q. Mr. Wayman asked you to come to the conference in Philadelphia, did he not?

A. Yes.

Q. He called you on the telephone? A. Yes, sir.

Q. And you went at his request? A. Yes, sir. 2

RE-DIRECT EXAMINATION BY MR. GROSVENOR:

Q. Prior to June 1st, 1910, what was the extent of your business in sanitary enameled iron ware with the Standard Manufacturing Company? Approximately how much did it aggregate annually?

A. Well, have I got to answer that question—

MR. NOBLE: I object to it.

MR. GROSVENOR: If you object to disclosing your business affairs, I will not press it.

3

Examination concluded and signing of deposition waived by agreement of counsel for the respective parties.

4

1 EDWARD W. HOTCHKISS, a witness of competent age, produced on behalf of the Petitioner, being first duly sworn, testified as follows.

DIRECT EXAMINATION BY Mr. GROSVENOR:

Q. Mr. Hotchkiss, what is your business?

A. We are jobbers of plumbing supplies.

Q. State the name of your company?

A. The Hotchkiss, Vail and Garrison Company.

Q. Located where?

A. 104 East 41st Street, New York City.

2 Q. What is your position? A. I am the President.

Q. Do you handle sanitary enameled iron ware, among other plumbers' supplies? A. Yes, sir.

Q. Where are your customers located?

A. In the Metropolitan District, and in Connecticut and in New Jersey.

Q. You sell to the plumbers? A. Yes.

Q. You were subpœnaed to produce certain documents here; have you them here?

A. That is all of the correspondence (indicating); I do not know whether that is what you require.

3 Q. Did you receive contracts from the various manufacturers of sanitary enameled iron ware on or about June 6, 1910, which were similar to Petitioner's Exhibit No. 11?

A. We did.

Q. Will you look at this Petition and state the names of some of the manufacturers of sanitary enameled iron ware with whom you did business prior to June 1, 1910?

A. There are only two, the Standard Sanitary Manufacturing Company and the Wheeling Enameled Iron Company.

Q. Did you refuse to sign that contract at that time?

A. We did.

4 Q. I show you a letter dated May 31, 1910, on the letterhead of the United States Sanitary Manufacturing Company and ask you if you received that letter at that time?

A. Yes, here is our receiving stamp (indicating).

Q. That letter contains this sentence, "It is necessary for you to execute these contracts before we can sell you licensed sanitary enameled iron ware;" the contract attached to that letter is the contract to which you referred?

A. Yes.

Q. Did the United States Sanitary Manufacturing Company refuse you goods after you refused to sign their contract? A. They did. 1

Q. You received a contract from the Standard Manufacturing Company similar to the one from the United States Manufacturing Company just referred to?

A. Yes, sir.

Q. Did you have objections to that contract?

A. We certainly did.

Q. And to certain terms of the re-sale arrangement?

A. Yes.

Q. Have you signed that agreement since? 2

A. We have.

Q. When did you sign it?

A. I don't know the date; I think it was in August.

Q. With what company?

A. With the Standard Sanitary Manufacturing Company and the United States Sanitary Manufacturing Company.

Q. With each of them? A. Yes.

Q. Did you receive from them permission to buy goods also from manufacturers not licensed?

A. Under certain conditions.

Q. What were those conditions? 3

A. Those conditions are enumerated in their correspondence there (indicating).

Q. Will you identify these (indicating), as letters written by you and received by you? A. Yes, sir.

Mr. GROSVENOR: Those letters have already been offered and marked as Petitioner's Exhibit No. 123 and No. 124, respectively.

Examination Suspended.

At this point a recess was taken until two o'clock. 4

After Recess.

EDWARD W. HOTCHKISS, resumed the stand for continuation of direct examination, and testified as follows.

DIRECT EXAMINATION BY Mr. GROSVENOR (continued):

Mr. GROSVENOR: I now offer in evidence the letters

of June 23rd, 1910, that letter being on the letterhead of the United States Sanitary Manufacturing Company and signed by A. H. Cline, Jr., the letter of June 25th, 1910, also from the United States Sanitary Manufacturing Company and signed by A. H. Cline, Jr.; and the carbon copy of a letter addressed to the United States Sanitary Manufacturing Company, Pittsburgh, Pennsylvania, dated June 27th, 1910, and signed by the Hotchkiss, Vail and Garrison Company; also a letter from the United States Sanitary Manufacturing Company, addressed to the Hotchkiss, Vail and Garrison Company, signed by A. H. Cline, Jr., and dated July 11, 1910. I offer those letters and ask that they be marked and filed as "Petitioner's Exhibit Nos. 223, 224, 225 and 226" respectively.

Letters referred to were then marked and filed as "Petitioner's Exhibits Nos. 223, 224, 225 and 226" respectively.

Mr. GROSVENOR: Those letters read as follows:

"Pittsburg, Pa., June 23, 1910.

"The Hotchkiss, Vail & Garrison Co.,
104 East 41st St.,
New York City, N. Y.

"Gentlemen:—

"We have received several orders from you lately, through our Mr. Ham, but as we have not received your signed resale agreement, we are not in a position to execute these orders, owing to the fact that our contract with Mr. E. L. Wayman, under whose patents we are now manufacturing our enameled ware, positively prohibits our accepting any orders from jobbers who have not signed the resale license agreement. We regret exceedingly to have to take this action, but have no alternative whatever in the matter as our contract with Mr. Wayman is very positive along these lines.

"Trusting that you will see your way clear to shortly send us your resale agreement properly ex-

cented, as we do not wish to delay you in making 1
shipment of any of these orders, beg to remain,

"Yours very truly,
"United States Sanitary Mfg. Co.,
"A. H. Cline, Jr.,
"A. H. C.-A. Secretary."

"Pittsburg, Pa., June 25, 1910.

"The Hotchkiss, Vail & Garrison Co.,
New York City, N. Y.

"Gentlemen:—

"Your two favors of the 24th received and carefully 2
noted. Now, in regard to any orders that you placed with us before the 6th inst., your not signing the resale contract will, of course, have no effect on these orders, as we intend to fill these just as soon as possible, as same have been entered and will be shipped just as soon as it is possible for us to get them out, as we are not trying to work any hardship on any jobber and, of course, can make no rule or contract which is retroactive. We regret exceedingly the position that you feel you are forced to take in 3
regard to signing this resale contract, and before cancelling the orders which you have asked us to cancel, which we cannot fill until we receive this resale contract, we want to state to you that Peck Bros. & Co. signed this resale contract yesterday and as we understand it, you are doing business on very similar lines to the Peck Bros. Co. in your City, and thought this might possibly influence you somewhat in signing this contract. This practically puts all of the high grade people in your City on this same basis. The J. L. Mott people have signed, Peck Bros. and the
Nason Mfg. Co., also the Federal-Huber Co. We 4
appreciate very much the business that we have been getting from your firm and we would very reuletantly cancel these orders, as we feel that we would like your support in this movement, and believe that in the long run it is the very best thing that was ever inaugurated for the jobbers. In your case where you are getting equal or better than these prices, it seems to us that it is a great protection to you as it

1 will keep some of the small East side jobbers who are in the habit of butting in on these good contracts of doing so in the future. We wish that before we cancel these orders which you have sent us, that you will reconsider this matter and let us hear from you further as we believe that possibly the action that Peck Bros. have taken will influence you in your action regarding this contract.

"Yours very truly,
"United States Sanitary Mfg. Co.,
"A. H. Cline, Jr.,
2 "AHC-R. Secretary."

"June 27, 1910.

"Mess. U. S. Sanitary Co.,
Pittsburg, Pa.

"Gentlemen:—

"Answering yours of the 25th, at the hands of your Mr. Cline, would say that we regret exceedingly to be in the position which we have been placed in, but we do not feel that we can conscientiously sign this
3 agreement where we have to adhere to your ruling on lump sum prices. We have never yet cut prices of tubs, and as we do not sell bath tubs or lavatories separately, without complete trimmings, it means a complete revolution of our billing system, and an invasion of the privacy of our business to such an extent that the hardship exists, as much as you may regret its imposition. The fact that Peck Bros. & Co. have signed the resale agreement would have no bearing as far as we are concerned, if we believe we are right. They have a large jobbing trade through-
4 out New England, where they sell all manner of plumbing supplies in competition with the other jobbers. This feature of their business is not akin to any of ours.

"Very truly yours,
"THE HOTCHKISS, VAIL & GARRISON CO."
"EWH

"Pittsburg, Pa., July 11, 1910. 1

"The Hotchkiss, Vail & Garrison Co.,
New York City, N. Y.

"Gentlemen:—

"Again referring to your Mr. Hotchkiss favor of the 27th ult. in reference to your signing the resale contract, beg to state the writer presented your letter to the Committee that met with Mr. Wayman on last Friday and went into this matter in detail, but owing to the fact that J. L. Mott has agreed to cut out all lump bids and bill his enameled ware separately, 2 the Committee did not think they could do anything in this matter at the present time. We are in hopes that this adjustment can be made later on but for the present it will be necessary for the jobber that signs the resale agreement contract to bill all of his enameled ware separately. We did all that we could to have this matter arranged satisfactorily for you but we were turned down by the Committee for the present. We would like mighty well to see your signature to a contract as we certainly deplore the fact that we cannot ship you goods that you have 3 ordered from us, but as we stated in our former letter we have no alternative whatever as our contract with Mr. Wayman is very binding.

"Trusting that you will reconsider this and go into the matter a little further and see that if you do not think on a whole this would be a benefit to you while it may be hurtful in a few cases and let us hear further from you, beg to remain,

"Yours very truly,
"United States Sanitary Mfg. Co.,
"A. H. Cline, Jr., 4
"A.J.-R. Secretary."

BY Mr. GROSVENOR:

Q. Did you receive these letters? A. Yes, sir.

Q. Here is also a letter on the letterhead of the United States Sanitary Manufacturing Company, dated May 31, 1910, and containing the sentence, "It is necessary for you to execute these contracts before we can sell you licensed

sanitary enameled ware"; the contract which went with that was similar to the contract known as Petitioner's Exhibit No. 11?

A. Yes, sir; the Jobber's License Agreement.

Mr. GROSVENOR: Here is also a letter from the Standard Sanitary Manufacturing Company, dated June 4, 1910, and addressed to you, containing the sentence, "It is necessary for you to execute these contracts before we can sell you licensed sanitary enameled ware."

I now offer two letters, one addressed by you to the Standard Sanitary Manufacturing Company and dated June 24, 1910, and the other purporting to be the reply from the Standard Sanitary Manufacturing Company, under date of June 27, 1910. I offer those letters in evidence as "Petitioner's Exhibits Nos. 227 and 228" respectively.

Letters referred to were then marked and filed as "Petitioner's Exhibits Nos. 227 and 228," respectively.

Mr. GROSVENOR: Those letters read as follows:

"June 24, 1910.

"Messrs. Standard Sanitary Mfg. Co.,
Pittsburg, Pa.

"Gentlemen:—

"We have not yet signed the resale license agreement, which you forwarded us, as there are many conditions about it which conflict with our best interests, as we see them. We would thank you please to let us know the status of our orders placed with you after June 6th, as we have had no acknowledgement of their receipt from you. We take it that orders placed with you previous to June 6th would not be subservient to the conditions attaining after June 6th, and we would appreciate your very prompt reply to us, of our interpretation, as we must base our arrangements on your decision.

Thanking you in advance for your courtesy and expedition, we are

Very truly,

"THE HOTCHKISS, VAIL & GARRISON CO."

"EWH"

"Pittsburg, U. S. A., June 27, 1910. 1

"Hotchkiss, Vail & Garrison,
New York City, N. Y.

"Gentlemen:—

"Answering your letter per E.W.H. of June 24th, would say that we have not entered orders dated subsequent to June 4th from any concern who has not entered into the resale agreement.

"Our license from the owner of the patents and under which we act arbitrarily fixes what we should do in this matter. 2

"I sincerely hope, for our mutual good, that you will see your way clear to sign the agreement as some two hundred fifty (250) other reputable jobbers in the United States have already signed.

"Yours very truly,
"Francis J. Torrance,
"FJT V. P."

Mr. GROSVENOR: Here is another letter dated July 14, 1910, on the letterhead of Edwin L. Wayman, and signed by him, which I offer in evidence as "Petitioner's Exhibit No. 229." 3

Letter referred to was then marked and filed as "Petitioner's Exhibit No. 229."

Mr. GROSVENOR: That letter reads as follows:

"July 14, 1910.

"Hotchkiss, Vail & Garrison,
New York, N. Y.

"Gentlemen:—

"Referring to paragraph 10 of the Jobber's License Agreement, would state that if you will execute this agreement I will authorize you to purchase until further notice, Kohler goods on the following basis: 4

"That you will stock and push Licensed Ware and handle only such Kohler goods as are absolutely required to fill orders covered by specifications, etc., in which Kohler's goods are specified. That you will furnish me a monthly report of your total purchases

1 from Kohler each month and sell his goods at the prices established in the re-sale sheets.

"I believe the re-sale prices will result in a great benefit to you as a Jobber, and that it will be to your interest to purchase Licensed Ware and support the Licensed Manufacturers in every respect as the results to be gained are mutual.

"Yours very truly,

"Edwin L. Wayman."

BY MR. GROSVENOR:

2 Q. Will you look at this letter (indicating); was it about that time that you signed a contract with the Standard Sanitary Manufacturing Company?

A. No, it was in August.

Q. In August?

A. Yes, I think the 29th; just prior to the 1st of September.

Q. The contract which you signed is similar to those contracts and to Petitioner's Exhibit No. 11? A. Yes.

Q. You have produced certain contracts similar to Petitioner's Exhibit No. 11, they being as follows: From
3 the Humphryes Manufacturing Company, the Wheeling Enameled Iron Company, McVay & Walker, with letters attached, in each of which letters the statement is contained, "It is necessary for you to execute these contracts before we can sell you licensed sanitary enameled ware." These contracts were received about what time?

A. About the 6th of June, possibly received on the 7th, as they are dated the 6th.

MR. GROSVENOR: This (indicating) is a letter dated August 25th, from the United States Sanitary Manufacturing Company, which I offer in evidence
4 as "Petitioner's Exhibit No. 230."

Letter referred to was then marked and filed as "Petitioner's Exhibit No. 230."

MR. GROSVENOR: That letter reads as follows:

"Pittsburg, Pa., August 25, 1910. 1

"The Hotchkiss, Vail & Garrison Co.,
New York City, N. Y.

Attention to Mr. Hotchkiss.

"Gentlemen:—

"In reply to your favor of the 24th, we anticipated a letter of this kind and the writer yesterday talked the matter over with Mr. Torrance and told him the arrangements that we had made with you and of course, as this has been done with Mr. Wayman's 2 permission, Mr. Torrance agreed that it was satisfactory, and it will be entirely satisfactory for you to sign a license agreement with the Standard Sanitary with the understanding that you have this same privilege as granted by ourselves, for as a matter of fact, the privilege is granted by Mr. Wayman, not by either of the Companies individually. We also returned to Mr. Ham yesterday the letter which Mr. Wayman got out for you permitting you to buy some Kohler ware, and Mr. Ham will turn this over to you as Mr. Wayman has signed same properly. 3

"Thanking you for having taken this matter up with us, beg to remain,

"Yours very truly,
"United States Sanitary Mfg. Co.,
"A. H. Cline, Jr.,
"AHC-R. Secretary."

CROSS EXAMINATION BY MR. NOBLE:

Q. Mr. Hotchkiss, are you a general jobber of plumbing supplies? A. Not a complete line.

Q. What lines are you in? 4

A. Just complete fixtures; we do not have much of the rough materials, such as pipes and fittings.

Q. In other words, if I understand you correctly, you mean you handle the fittings as far as they go to make up a bath room, such as the bath tub and the lavatory?

A. Yes, sir.

Q. But not with the pipings?

A. Yes, that is the exposed pipings in nickel.

1 Q. But not the pipings that go through the house?
A. No, sir.
Q. What you deal in is what is known practically as plumbers' fixtures in the house, are they not?
A. Yes, sir.

Examination concluded and signing of deposition waived by agreement of counsel for the respective parties.

ERASTUS E. HAFF, a witness of competent age, produced, on behalf of the Petitioner, being first duly sworn,
2 testified as follows.

DIRECT EXAMINATION BY Mr. GROSVENOR:

Q. Mr. Haff, what is your business?
A. Plumbing supplies.
Q. Where are you located? A. 245 Ninth Avenue.
Q. What is the name of your Company?
A. F. N. DuBois and Company.
Q. Your Company are jobbers of sanitary enameled iron ware such as bath tubs and lavatories and so forth?
A. We are.
3 Q. You sell your goods to the plumber? A. We do.
Q. You are recognized in the trade as jobbers?
A. We are.
Q. And your name appears in the blue book which is known as Petitioner's Exhibit No. 30? A. It does.
Q. Does that book contain the names of the principal jobbers in the United States? A. I think it does.
Q. Where are your customers principally located?
A. New England and the middle States.
Q. And you ship from your store house to the plumbers?
A. We do.
4 Q. And also have orders shipped from the factories?
A. In some cases.
Q. But generally you ship from your stock? A. Yes, sir.
Q. Will you look at the list of corporation defendants and state with what companies you did business prior to June 1st, 1910? A. The Standard Sanitary Manufacturing Company, A. Weiskittel & Son Company; Cahill Iron Works; the Day-Ward Company; the Kerner Manufacturing Company and the McCrum-Howell Company.

Q. Have you executed a license contract with any of those companies? A. We have not. 1

Q. You have been subpœnaed to produce certain documents; have you those with you? A. I have them.

Q. Will you let me have them? A. These are all.

Mr. GROSVENOR: The witness has handed me a letter dated June 9, on the letterhead of the Standard Sanitary Manufacturing Company and signed by Francis J. Torrance, also a reply to the same addressed to Mr. Francis J. Torrance, dated June 10, 1910, and signed by F. N. DuBois & Company. I offer those letters in evidence as "Petitioner's Exhibits Nos. 231 and 232" respectively. 2

Letters referred to were then marked and filed as "Petitioner's Exhibit Nos. 231 and 232" respectively.

Mr. GROSVENOR: Those letters read as follows:

"Pittsburg, U. S. A., June 9, 1910.

"Mr. E. E. Haff,
Of F. N. DuBois & Co.,
New York City, N. Y.

"Dear Sir:— 3

"I have just wired you relative to your order 4911. It is going to you today to New York as per my advices and you can charge back the freight.

"I have had the packages marked with the respective names as per order.

"I am anxiously awaiting your signature to the re-sale agreement. I have been busy here two whole days and up to eleven o'clock one night and ten o'clock another night, signing up these papers. I just had a message from Chicago where the Chicago and other Western jobbers held a meeting yesterday 4 that they were a unit on the re-sale agreement and have signed and forwarded the papers. There was some slight misunderstanding or disagreement which has been explained and settled.

It is the best scheme I know of for regulating and making profitable the jobbing business and the only legalized method that I am aware of. I trust you will not make us wait long or embarrass us by

declining orders in the future for we positively will not deviate from our rule. We entered into this agreement in good faith and the proper spirit on the theory that it was beneficial to the jobbing trade and on the positive assurance of at least 95% of our customers that they wanted such an agreement and I must admit that the manner and volume in which the papers have come before me for signature certainly indicate the same opinion.

"Yours very truly,

"FJT "Francis J. Torrance."

"June 10, 1910.

"Mr. Francis J. Torrance,
c/o Standard Sanitary Mfg. Co.,
Pittsburg, Pa.

"Dear Mr. Torrance:—

"The writer is in receipt of your favor of the 9th inst., and we wish to thank you at this time for the many favors we have received from you in the past, and particularly for the favor you did us last week, in taking care of us at old prices on 1300 and odd Nemo tubs, sold on contracts, so we did not have a loss on these.

"Referring to the contract which you have sent us, we would not care to sign this for several reasons. In the first place, the rebate scheme and the resale price are both distasteful to me. We have to carry our customers on new work from three to five months, and on the resale proposition we would have to sell our goods within 5% of cost, and the other two fives would be in the hands of the manufacturers for seven months, taking this much capital out of our business for a long length of time.

"Also we would have no chance in competing with such people as Colwell Lead Co., who are manufacturing jobbers. We do not know what restrictions are placed on them to make them forfeit a large sum of money in case they were compelled to buy some goods from an outside manufacturer, or should they cut the resale price. Also in reference to the resale price, from past experience, we have no confidence

in the jobbers in New York City maintaining this resale price absolutely. 1

"Furthermore, while you give us your assurance that this entire plan is perfectly legal, at the same time we have never yet known half a dozen lawyers to agree on any one thing, and we don't want to take any chances of sending either Mr. DuBois, who is over eighty years of age, Mr. Blauvelt, or myself to Atlanta for fifteen years, more or less.

"Taking the whole scheme from the start to finish, in its entirety, it is distasteful to us, so we have decided we will take the tubs which you kindly protected us on, and fill the existing contracts which we have on our books, and practically discontinue, for the time being, pushing the sale of enamel ware. We will lend all our efforts to pushing the sale of lead goods which we manufacture, and other lines which we may be able to handle legitimately as independent business men. 2

"Very truly yours,

"F. N. DuBois & Co."

"Hoping our pleasant personal relations will continue as in the past, we remain, 3

"Very truly yours,

"EEH/M "F. N. DuBois & Co."

By Mr. Grosvenor:

Q. At the beginning of June, did you receive a series of contracts similar to Petitioner's Exhibit No. 11, from the different manufacturers with whom you had been doing business? A. We did.

Mr. Grosvenor: The witness has produced a letter from the Humphryes Manufacturing Company, dated June 6, and containing the sentence, "It is necessary for you to execute these contracts before we can sell you licensed sanitary enameled ware"; attached to that letter were contracts in duplicate; also a letter from the Barnes Manufacturing Company, dated June 11, 1910, and stating "Please sign the two enclosed agreements and return them to yours truly, Jos. Kessel"; also a letter and contract 4

from the Wheeling Enameled Iron Company, dated June 6, 1910, and containing the sentence, "It is necessary for you to execute these contracts before we can sell you licensed sanitary enameled ware"; letter and contract from A. Weiskittel & Son Company, dated May 31, 1910, and containing the sentence, "It is necessary for you to execute these contracts before we can sell you licensed sanitary enameled ware"; letter and contract from McVay & Walker, dated June 4, 1910, the letter containing the sentence, "It is necessary for you to execute these contracts before we can sell you licensed sanitary enameled ware"; a letter and contract from the United States Sanitary Manufacturing Company, Dated May 31, 1910, the letter containing the sentence, "It is necessary for you to execute these contracts before we can sell you licensed sanitary enameled ware"; letter and contract from the Cahill Iron Works, dated June 1, 1910, and containing the sentence, "It is necessary for you to execute these contracts before we can sell you licensed sanitary enameled ware"; letter and contract from the McCrum-Howell Company, dated May 28, 1910, the letter containing the sentence, "It is necessary for you to execute these contracts before we can sell you licensed sanitary enameled ware"; also a letter from the Standard Sanitary Manufacturing Company, dated June 4, 1910, containing the sentence, "It is necessary for you to execute these contracts before we can sell you licensed sanitary enameled ware"; I offer them as Exhibit No. 21, for identification.

Letters and contracts referred to were then marked and filed as "Exhibit No. 21 for identification."

BY MR. GROSVENOR:

Q. A similar contract came with that letter from Mr. Torrance of the Standard Sanitary Manufacturing Company? A. Yes.

Q. Are you able to procure the goods of these manufacturers who forwarded to you these different license contracts? A. Not from them.

Q. You obtain them from jobbers? 1
A. Yes, get them through jobbers.
Q. At what prices? A. Plumbers' prices.
Q. And then sell them to the plumbers?
A. Yes, sir; at plumbers' prices.
Q. And your business is that of— A. Jobbers.
Q. There is not much in it for you, then? A. No, sir.

Mr. GROSVENOR: I offer in evidence a letter dated June 26, 1910, on the letterhead of Edwin L. Wayman, and signed by him and addressed to the witness, as "Petitioner's Exhibit No. 233."

Letter referred to was then marked and filed as 2
"Petitioner's Exhibit No. 233."

Mr. GROSVENOR: That letter reads as follows:

"June 26, 1910.

"Mr. E. E. Haff,
c/o F. N. DuBois & Co.,
New York, N. Y.

"Dear Mr. Haff:—

"I am in receipt of copy of quotations sent out by you under date of June 20th, the prices in which 3
are considerable below the established market. I presume that you are aware that there is no disposition on the part of the Licensed Manufacturers to start a cut market, which would not do any one any good, but if the prices you are making continue they will be forced to protect themselves with their trade. I would like to have your co-operation in the Resale Plan, which I believe is to the Jobbers' benefit, and I will be glad to have some expression from you as to your intentions in the matter.

"With kind personal regards, I am, 4
"Yours very truly,
"Edwin L. Wayman."

CROSS EXAMINATION BY Mr. NOBLE:

Q. With what firm are you connected?
A. F. N. DuBois and Company.
Q. Is that a corporation or partnership?
A. Partnership.

1 Q. Do you buy goods from the Iron City Manufacturing Company? A. We do not.

Q. Do you buy goods of J. M. Kohler and Sons Company? A. We do.

Q. How long have you been buying from Kohler and Sons? A. Since about the first of June.

Q. Did you buy anything from them before that?

A. Yes, some, but not much.

Q. Did you ever buy any from the Iron City Manufacturing Company before that?

A. Not in any volume, for the last couple of years.

2 Q. Before that you did business with them of considerable volume? A. Up until two years ago, yes.

Q. What is the nature of your business?

A. Plumbing supplies, principally.

Q. What percentage of that business does the sanitary enameled iron ware constitute?

A. I should say about fifteen per cent.

Q. You buy your sanitary enameled iron ware goods from J. M. Kohler Sons Company? A. Yes, sir.

Q. And the others you get from the licensed manufacturers so called, indirectly, is that correct?

3 A. That is correct.

Q. Are you interested in any of the licensed manufacturers? A. I am not.

Q. Is anybody connected with you interested in them?

A. Not yet.

Q. Well, what is the status of the negotiation?

A. There is no relation as yet.

Q. What is the status of the negotiation?

Mr. GROSVENOR: What Company does he refer to?

Mr. NOBLE: Which one of the licensed manufacturers do you refer to?

4 Mr. GROSVENOR: I don't think he has referred to any.

Mr. NOBLE: Yes, he has.

THE WITNESS: No, I have not. What was the question that was asked?

The stenographer then read the cross question.

Mr. NOBLE: What did you mean when you said, "not yet" in response to my question as to what the

relation between you and anybody connected with any of the licensed manufacturers was? 1

A. Well, we are thinking of buying an interest.

Q. In which concern?

A. The Kerner Manufacturing Company.

Q. Where is their place? A. Zelienople.

Q. They are one of the licensed manufacturers, are they not? A. They are.

Q. Has your firm or the members of it any relationship with any other jobbers of plumbing supplies?

A. Not as a firm.

Q. Are any of the members of your firm connected with any other firm? 2

A. I, personally, hold an interest in another corporation.

Q. Is that firm a licensed jobber? A. It is.

Q. And that is how you get the licensed goods?

A. We get them through them; yes, sir.

Examination concluded and signing of deposition waived by agreement of counsel for the respective parties.

3

FRED H. BOARDMAN, a witness heretofore produced and sworn, resumed the stand and testified as follows.

DIRECT EXAMINATION BY Mr. GROSVENOR (continued):

Q. You just stated to me that you wanted to correct your testimony, did you not?

A. Yes, as to buying goods from the manufacturers after the time when that license agreement was put out.

Q. That is after June 1st? A. After June 1st.

Q. As to which manufacturers?

A. The Standard Sanitary Manufacturing Company and the Cahill Iron Works and the Kerner Manufacturing Company or, in fact, I might say, all the manufacturers. 4

Mr. NOBLE: What are you correcting?

A. (Continuing): The feature is this: At that meeting in Philadelphia—

Mr. NOBLE: On June 29.

A. (Continuing): Pending the decision of Mr. John A.

Kelly of the Iron City Manufacturing Company—pending his deciding whether he would go into this arrangement or not—we were given the privilege from Mr. Wayman of getting whatever goods we wanted from the licensed manufacturers and they did give us some goods for a week or ten days. Some time after that we purchased a bill goods from the Kerner Manufacturing Company at our Brooklyn store. We had no order for them at our Brooklyn store, but our New York store had an order for several carloads, and we considered that the shipment they made to us applied against that other order, although it really did not.

BY MR. GROSVENOR:

Q. That order which Kerner got was sent in before June 1st? A. Yes, the original order was.

Q. The order for the two carloads was sent in before June 1st? A. Yes, sir.

CROSS EXAMINATION BY MR. NOBLE:

Q. Then, in addition to your testimony of this morning, you want to make the statement on the record that following the Philadelphia meeting to which you testified—

A. Yes, sir.

Q. Various licensed manufacturers supplied you or your company with the goods? A. Yes, sir.

Q. That is sanitary enameled iron ware goods?

A. Yes, sir.

Q. For a week or ten days afterwards? A. Yes, sir.

Q. So you mean to say that you got these additional sanitary enameled iron ware goods from the licensed manufacturers? A. Yes, sir.

Examination concluded and signing of deposition waived by agreement of counsel for the respective parties.

EDWARD T. DAVIS, a witness of competent age, produced on behalf of the Petitioner, being first duly sworn, testified as follows. 1

DIRECT EXAMINATION BY MR. GROSVENOR:

Q. Mr. Davis, what is your business?

A. Plumbing supplies.

Q. What company are you connected with?

A. The New England Plumbing Supply Company of Springfield; I have another store in Boston, the Cambridge Supply Company.

Q. You are jobbers? A. Yes, sir. 2

Q. And you deal in sanitary enameled iron ware goods?

A. Yes, I do.

Q. Do you sell to plumbers? A. I do.

Q. Where are your customers located?

A. Practically throughout New England.

Q. You ship from your stock to them? A. Yes.

Q. Also on orders sent direct to the manufacturers?

A. Yes, sir.

Q. Will you look at this list of corporation defendants and state what manufacturers you did business with prior to June 1, 1910? 3

A. The Standard Sanitary Manufacturing Company; the Day-Ward Company; the McCrum-Howell Company; the Wheeling Enameled Iron Company—I think that is all.

Q. Did you do business also with certain of the manufacturers, the so-called independent, whose names appear on page 10 of the Petition?

A. Yes, I purchased from the Iron City Manufacturing Company.

Q. You have been requested on subpœna to produce certain papers; have you them with you?

A. A very few; the others I have destroyed; I did not save them all. 4

Q. You produce a jobber's license agreement similar to Government's Exhibit No. 11. Did you receive a copy of that from any of these manufacturers which you have mentioned?

A. Yes, all with the exception of the Iron City Manufacturing Company; I did not receive any from them.

Q. Were there letters attached like this one of the Standard Sanitary Manufacturing Company, containing

1 this sentence, "It is necessary for you to execute these contracts before we can sell you licensed sanitary enameled ware?" A. There were.

Q. Have you executed a contract with any of these manufacturers? A. I have not.

Q. Are you able to get the goods of any of them today?

A. Not direct from them; no, sir.

Q. How do you get them?

A. I have to get them from another jobber if I get them at all.

Q. And if you get them that way, what prices do you
2 pay? A. Plumbers' prices.

Q. And you sell to whom? A. The plumbers.

Q. At what prices?

A. As a rule at the prices at which they billed them to me.

Q. Do you know Mr. Wayman, the defendant in this case? A. No, I do not.

CROSS EXAMINATION BY Mr. NOBLE:

Q. How long have you been doing business with the Iron City Manufacturing Company?

3 A. I should say two or three months previous to June 1st.

Q. Do you do business with J. M. Kohler Sons Company?

A. I do.

Q. With the Blairsville Enameled Iron Ware Company?

A. No.

Q. You never have done any? A. Never have.

Q. Or with the Clymer Manufacturing Company of Indiana? A. No.

Q. You never have? A. No, sir.

Q. Or with the Louis Lipp Company of Cincinnati?

A. No, sir.

4 Q. Or with the Washington Iron Works of Los Angeles, California? A. No.

Q. Is your business a general business in plumbers' supplies? A. It is.

Q. What percentage of that business does the sanitary enameled iron ware business constitute?

A. I should say about twenty-five per cent.

Q. You are not doing business with the Standard Sanitary Manufacturing Company, the Day-Ward Company,

the McCrum-Howell Company or the Wheeling Enameled Iron Company? A. No, not in enameled iron ware. 1

Q. You get goods manufactured by those companies, however, if you need them? A. If I have to; yes, sir.

Q. You get those goods from other jobbers who can buy from them? A. Yes, sir.

Q. What your arrangements are you do not care to state?

A. That is all the arrangements I have; there is nothing in it for me. I do not take any more business than I have to.

Q. Your business now in sanitary enameled iron ware is only with the Iron City Manufacturing Company and the J. M. Kohler Sons Company? 2

A. Only Kohler; the Iron City Manufacturing Company cut me out.

Q. Why?

A. Because they made arrangements with some other concern in the East to handle their product, and because of that I was thrown down.

Q. You say that about the 6th of June or early in June you received copies of these contracts and letters from the Standard Sanitary Manufacturing Company, the Day-Ward Company, the McCrum-Howell Company and the Wheeling Enameled Iron Company; is that correct? A. Yes, sir. 3

Q. Those are companies with whom you have previously done some business? A. Yes, sir.

Examination of witness concluded and signing of deposition waived by agreement of counsel for the respective parties.

JOHN A. MURRAY, a witness of competent age, produced on behalf of the Petitioner, being first duly sworn, testified as follows. 4

DIRECT EXAMINATION BY MR. GROSVENOR:

Q. Mr. Murray, what is your business?
A. Plumbers' supplies.
Q. What company are you connected with?
A. John A. Murray and Company.
Q. Do they handle sanitary enameled iron ware?
A. Yes, sir.

1 Q. Are they jobbers? A. Yes, sir.

Q. And sell to the plumbers? A. Yes, sir.

Q. What is your address?

A. 310-312 West Thirty-ninth Street; New York.

Q. Your customers are located where?

A. In New York, Connecticut, New Jersey and Pennsylvania.

Q. You ship from your storehouse or warehouse to them? A. Yes, sir.

Q. And you send orders to factories and have shipments made from them to the plumbers?

2 A. In carload lots; yes, sir.

Q. Are you recognized in the trade as jobbers?

A. Yes, sir.

Q. Does your name appear in that book which is known as Petitioner's Exhibit No. 30, as a jobber?

A. I have not seen that, but I assume that it is.

Q. Does that book contain the names of the principal jobbers in the United States? A. Yes, sir.

Q. Your name appears there on page 21 (indicating), does it not? A. Yes, sir.

Q. Will you look at this list of manufacturers of sanitary enameled iron ware, being the corporation defendants
3 in this case, and state with what manufacturers you did business prior to June 1st, 1910?

A. The Standard Sanitary Manufacturing Company; the Cahill Iron Works; the Humphryes Manufacturing Company; and the United States Sanitary Manufacturing Company.

Q. I am referring, you understand, to the sanitary enameled iron ware goods entirely? A. Yes, sir.

Q. You were subpœnaed to produce certain papers; have you them with you? A. Yes, sir.

Papers referred to were then handed to counsel.

4 Q. You have produced certain contracts which are similar to Petitioner's Exhibit No. 11, they being proposed jobber's license agreements; did you receive these early in June? A. Yes, sir.

Mr. Grosvenor: I offer these for identification as Exhibit No. 22.

Papers referred to were then marked and filed as "Exhibit for identification No. 22."

Mr. GROSVENOR: The first is a letter from the 1
Standard Sanitary Manufacturing Company, dated June 4, 1910, and signed by Mr. F. J. Torrance, containing the sentence, "It is necessary for you to execute these contracts before we can sell you licensed sanitary enameled ware," with contracts attached; a letter from the Humphryes Manufacturing Company containing the sentence, "It is necessary for you to execute these contracts before we can sell you licensed sanitary enameled ware," with contract attached; a letter from the Kerner Manufacturing Company, dated June 3, containing the sentence, "It 2
is necessary for you to execute these contracts before we can sell you licensed sanitary enameled ware," with the contracts attached; a letter from the United States Sanitary Manufacturing Company, dated May 31, 1910, containing the sentence, "It is necessary for you to execute these contracts before we can sell you licensed sanitary enameled ware," with contracts attached; a letter from the Cahill Iron Works, dated June 1, 1910, containing the sentence, "It is necessary for you to execute these contracts before we can sell you licensed sanitary enameled ware," with 3
contracts attached; a letter from the Wheeling Enameled Iron Company, dated June 6, 1910, containing the sentence, "It is necessary for you to execute these contracts before we can sell you licensed sanitary enameled ware," with contracts attached; a letter from the Barnes Manufacturing Company, dated June 11, reading, "Please sign the two enclosed agreements and return them to yours truly, Jos. Kessel"; a letter from McVay & Walker, dated June 4, 1910, and containing the sentence, "It is necessary for you to execute these contracts be- 4
fore we can sell you licensed sanitary enameled ware," with contracts attached; a contract from the Day-Ward Company, without a letter, the contract being dated October 15, 1910; and a letter which I also offer as part of the same Exhibit No. 22, being dated June 3, 1910, on the letterhead of Edwin L. Wayman and addressed to the jobbing trade, with a copy of the Jobber's License Agreement attached thereto.

1 Q. Did all those come to you? A. Yes, sir.

Q. Did you execute a license agreement? A. No, sir.

Q. Are you able today to obtain the goods of any of these manufacturers who sent you these contracts?

A. No, sir.

Q. How long has your Company been in business?

A. Twelve years.

Q. Do you know Edwin L. Wayman?

A. I know of him, yes.

Q. Do you know him?

A. I know him personally, yes.

2 Q. Did you ever have any discussion with him with reference to these license agreements? A. No.

CROSS EXAMINATION BY Mr. NOBLE:

Q. You buy goods today from whom, Mr. Murray?

A. We buy chiefly from the Iron City Manufacturing Company.

Q. That is the Company of which Mr. Kelly is President, is it not? A. Yes, sir.

Q. You also buy from the Kohler Company?

A. Yes, sir.

Q. And the Clymer Company? A. No, sir.

3 Q. The Kerner Manufacturing Company? A. No, sir.

Q. The Blairsville Company? A. No, sir.

Q. You do not do business with any of those companies?

A. No, sir.

Q. Does your business extend out West? A. No.

Q. So you do not buy goods of Louis Lipp? A. No, sir.

Q. Nor of the Washington Iron Works of California?

A. No, sir.

Q. And you say you are not buying from the Cahill or Standard or Humphryes or United States Manufacturing Companies? A. No, sir.

4 Q. Do you buy those goods occasionally from other sources? A. Yes, sir.

Q. Through—

A. (Interrupting): Through licensed jobbers.

Q. Are you interested in any licensed jobber company or partnership? A. No, sir.

Q. Is yours a partnership or a corporation?

A. Partnership.

Q. Engaged in the general plumbing supply business?

A. Yes, sir. 1

Q. What percentage of your total business would you say the sanitary enameled iron ware business constituted?

A. About seventeen per cent., approximately.

Examination concluded and signing of deposition waived by agreement of counsel for the respective parties.

FRANK J. McGUIRE, a witness of competent age, produced on behalf of the Petitioner, being first duly sworn, testified as follows. 2

DIRECT EXAMINATION BY MR. GROSVENOR:

Q. Mr. McGuire, what is your business?

A. Contracting plumbers.

Q. You install such things as sanitary enameled iron ware, bathtubs, sink and lavatories? A. Yes, sir.

Q. Did you have a contract for doing the work for that place—what is the name? A. Valhalla.

Q. What is the name of the building?

A. The Jennie Clarkson Home for Girls.

Q. Do you, as a plumber, buy your goods from the jobber? A. Yes, sir. 3

Q. And then you install them? A. Yes, sir.

Q. Did you have a contract for putting in the bathtubs and sanitary enameled iron ware in that Home? A. Yes.

Q. To what jobber did you go to obtain your supply of bathtubs for the Jennie Clarkson Home for Girls?

A. To the Central Plumbers Supply Company.

Q. Of what city? A. Of your city.

Q. That is Mr. Hirschfeld's Company? A. Yes, sir.

Q. Did you go to anyone else?

A. I had a figure from the Peck Brothers.

Q. On whose goods? 4

A. The Standard Sanitary Manufacturing Company's bathtubs and lavatories.

Q. Did you accept their bid? A. No, sir.

Q. Did you accept that of the Central Plumbers Supply Company?

A. The bid of the Central Plumbers Supply Company was accepted; yes, sir.

Q. For whose goods? A. J. M. Kohler and Sons'.

1 Q. Now, did you have any discussion with Mr. Hirschfeld about the installation of the Standard Sanitary Manufacturing Company's goods? A. Yes, sir.

Q. Did Mr. Hirschfeld make a bid for the installation of their goods?

THE WITNESS: Of the Standard?

Mr. GROSVENOR: Yes.

A. Yes, sir.

Q. This was when?

A. Well, it was in the early part of June, I should say.

2 Q. If you have any papers there to refresh your recollection, you may look at them?

A. (Referring to memorandum): Yes, sir; the 4th of June.

Q. The 4th of June? A. Yes, sir.

Q. That bid was for the installation of Standard Sanitary Manufacturing Company's goods and accepted?

A. Yes, sir.

Q. And, did you get those goods? A. No, sir.

Q. What happened?

A. I notified the Central Plumbers Supply Company to

3 get ready the order for shipment and they notified me that they could not furnish me with the Standard Sanitary goods because I would have to have a new figure on the job. I came to New York and saw Mr. Hirschfeld and wanted to know why I could not have them and he said because—

Mr. NOBLE: I object to any conversation with Mr. Hirschfeld.

Q. What did he say to you?

A. He said I should call up the Standard people myself.

Q. Did you do so? A. Yes, sir.

Q. With whom did you speak?

4 A. Mr. Bassett was the man I had on the telephone and he told me to re-figure it.

Q. Was anything said about signing a contract?

A. No, sir; not to me.

Q. Whose goods did you finally put in?

A. The J. M. Kohler Sons Company's goods.

Q. Did Mr. Hirschfeld make a re-figuring for the Standard Sanitary's goods?

THE WITNESS: A re-figure for the Standard goods? 1
Mr. GROSVENOR: Yes.

A. No, sir; I told him there was no sense in it.

Q. Why not?

A. Because I had a set price and I could not go any higher and I was led to believe that it would go higher if it was re-figured.

Q. Did you re-figure it? A. No, not for the Standard.

Q. Then you got these Kohler goods?

A. Yes, sir; I asked the architect to go and look at them.

2

CROSS EXAMINATION BY Mr. NOBLE:

Q. You did not re-figure the price that you were willing to pay the Central Plumbers Supply Company? That is, Mr. Hirschfeld's Company, for Standard goods, did you?

A. I got another figure from Mr. Hirschfeld.

Q. You did not re-figure it as one of your jobs?

A. Yes, sir.

Q. I understood you to say that you did not?

A. Not for the Standard goods.

Q. That is what I asked you?

A. No, I did not; not for the Standard goods. 3

Q. So you don't know what figures you would have received from Mr. Hirschfeld for Mr. Marshall on Standard goods? A. I don't know; no, sir.

Q. When Mr. Hirschfeld made you a bid quoting Standard lavatories and bathtubs, you later substituted in place of that the Kohler, as I understand? A. Yes, sir.

Q. You never accepted his offer definitely as to Standard goods, did you? A. No, I did not.

Examination concluded and signing of deposition waived by agreement of counsel for the respective parties. 4

1 WILLIAM HODGE, a witness of competent age, produced on behalf of the Petitioner, being first duly sworn, testified as follows.

DIRECT EXAMINATION BY Mr. GROSVENOR:

Q. What is your business, Mr. Hodge?

A. Contracting plumber.

Q. Do you buy sanitary enameled iron ware from jobbers? A. Yes, sir.

Q. And then install it? A. Yes, sir.

Q. State where you are located?

2 A. 15 East 3rd Street, Mt. Vernon, New York.

Q. Did you have a contract for installing the lavatories for the Westchester Lighting concern?

A. I did not have the contract with them; it was day's work.

Q. For whom? A. The Westchester Lighting Company.

Q. You were installing them for that Company?

A. For them; yes, sir.

Q. You were to buy the lavatories for them and put them in and then charge them for it, is that right?

A. Yes, sir.

Q. Any other sanitary enameled iron ware except

3 lavatories? A. No, sir.

Q. How many were there?

A. Nine all told; two, three and four sections.

Q. To what jobber did you go?

A. To the Central Plumbing Supply Company.

Q. That is Mr. Hirschfeld's Company? A. Yes, sir.

Q. In New York City? A. Yes, sir.

Q. When was that? A. Somewere around in May.

Q. Did he make a bid? A. Yes, sir.

Q. Did you accept that bid? A. Yes, sir.

Q. Now, what Company's goods were they?

4

THE WITNESS: Which, the ones I put in?

Mr. GROSVENOR: No, the ones he was going to furnish you.

A. Oh, the Standard Sanitary Manufacturing Company's goods.

Q. And you accepted his bid to give those goods to you, is that right? A. Yes, sir.

Q. Was the building ready to receive them at that time?

THE WITNESS: Ready to receive the goods? 1
MR. GROSVENOR: Yes, for you to put them up.

A. Yes, sir.

Q. Did you get them? A. No, sir.

Q. Why, what happened?

A. Well, he said he could not get them because he would not sign an agreement with the Standard Sanitary Manufacturing Company.

MR. NOBLE: I move that that be stricken out.

Q. Did you see any officers of the Standard Sanitary Manufacturing Company? 2

A. Yes, I and Mr. Kinne saw Mr. Bassett; he selected the lavatories.

Q. You went with him? A. Yes, sir.

Q. Where did you go?

A. Around to 35th Street and 6th Avenue, to their show rooms.

Q. And after that you accepted the bid of Mr. Hirschfeld? A. Yes, sir.

Q. When he said he could not furnish them, what did you do? Did you see any officers of the Standard Sanitary Manufacturing Company after that? A. No. 3

Q. Did you make any effort to get those goods from them? A. No, sir.

Q. Whose goods did you get?

A. They recommended the Blairsville.

Q. Did you get them?

A. Yes, around the middle of August.

CROSS EXAMINATION BY MR. NOBLE:

Q. You were not doing this work under contract, but just day's work? A. Yes.

Q. You did not make any contract then with Mr. Hirschfeld, did you? A. Yes, sir; I bought the goods. 4

Q. You personally bought them? A. Yes, sir.

Q. Did you have any contract with the Westchester Lighting Company?

A. Yes, I bought several things together, besides that.

Q. I mean, you just went there and selected them?

A. Selected the goods and had a contract for other goods too.

Q. Were those other goods for the same job?

A. Yes, sir; but not from the Standard.

Q. What authority had you from the Westchester Lighting Company to make contracts for them?

A. I could do that; I was supplying the goods.

Q. You were doing day's work and supplying the goods?

A. Yes, sir.

Q. When Mr. Hirschfeld told you that you could not get the goods of the Standard Sanitary Manufacturing Company, you took the Blairsville goods; is that correct?

A. Yes, sir.

Q. And you never made any effort to get the Standard goods after that; is that correct? A. Yes, sir.

Examination concluded and signing of deposition waived by agreement of counsel for the respective parties.

Adjourned.

IN THE CIRCUIT COURT OF THE UNITED STATES 1

FOR THE DISTRICT OF MARYLAND.

THE UNITED STATES OF AMERICA,
Petitioner,

vs.

STANDARD SANITARY MANUFACTURING COMPANY, *et al.*,
Defendants.

2

Post Office Building,

Chicago, Ill., December 13, 1910.

Pursuant to notice, the taking of evidence for the Petitioner was resumed in the Post Office Building, in Chicago, Ill., on the thirteenth day of December, 1910, at 2.45 o'clock P. M.

COUNSEL PRESENT:

EDWIN P. GROSVENOR, Esq., Special Assistant to the Attorney-General, for the Petitioner. 3
HERBERT NOBLE, Esq.,
HARTWELL P. HEATH, Esq.,
on behalf of the Defendants.

JOSEPH F. GROSSWILLER, a witness of competent age, produced on behalf of the Petitioner, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY Mr. GROSVENOR:

Q. Mr. Grosswiller, what is your business?
A. I am in the wholesale plumbing supply business. 4
Q. You are a jobber of plumbing supplies? A. Yes, sir.
Q. What is the name of your firm?
A. The Joseph F. Grosswiller Supply Company.
Q. What is your position in that firm?
A. President and Treasurer.
Q. Where are you located? A. Toledo, Ohio.
Q. They are jobbers in sanitary enameled iron ware?
A. Yes, sir.

1 Q. Such as bathtubs, lavatories and sinks? A. Yes, sir.

Q. And other articles that go in that term? A. Yes, sir.

Q. You buy from the manufacturer and sell to the plumber? A. Yes, sir.

Q. Where are your customers located, generally speaking? A. Ohio, Michigan and Indiana.

Q. You ship from your store house? A. Yes, sir.

Q. Or your show rooms? A. Yes, sir.

Q. To these plumbers located in these various states? A. Yes, sir.

Q. Do you send orders to them from the manufacturers
2 direct?

A. Yes, sir; in some cases, where we do not have the goods in stock.

Q. Before June 1, 1910, with what manufacturers of sanitary enameled iron ware did you do business?

A. With the Cahill Iron Works, the L. Wolff Manufacturing Company, the Iron City Sanitary Manufacturing Company and the Standard Sanitary Manufacturing Company. I think that is all. The Cahill Iron Works are located at Chattanooga, Tennessee; the L. Wolff Manufacturing Company is located in Chicago; the Iron City Manu-
3 facturing Company is in Pittsburgh; the Standard Sanitary Manufacturing Company is in Pittsburgh, and I think that is all. We may buy some small orders from perhaps some of the other manufacturers.

Q. But these were your principal suppliers?

A. Yes, sir.

Q. At that time you were buying these goods on orders without contract? A. Yes, sir; in most all cases.

Q. On June 1, 1910, or about that time, did you receive a series of letters and contracts from a number of manufacturers engaged in the manufacture of sanitary enameled
4 iron ware? A. Yes, sir.

Q. I show you these letters and contracts and ask you if you received those about the time stated therein?

A. Yes, sir; we received all of those.

Mr. GROSVENOR: I offer those letters and contracts in evidence as "Petitioner's Exhibit No. 234."

Papers referred to were then marked and filed as "Petitioner's Exhibit No. 234."

Mr. GROSVENOR: This exhibit includes a letter with

a contract from each of the following companies, the contracts being generally in duplicate: The Humphryes Manufacturing Company of Mansfield, Ohio; the Barnes Manufacturing Company, Mansfield, Ohio; each of those are dated June 4; The National Sanitary Manufacturing Company of Salem, Ohio, dated June 6; the Union Sanitary Manufacturing Company of Noblesville, Indiana, dated May 31; the Standard Sanitary Manufacturing Company of Pittsburgh, dated June 4; the United States Sanitary Manufacturing Company, dated May 31; McVay & Walker, Braddock, Pennsylvania, dated June 4; The McCrum-Howell Company, Chicago, dated June 28; L. Wolff Manufacturing Company, Chicago, dated June 6; The Cahill Iron Works, Chattanooga, Tennessee, dated June 1; Kerner Manufacturing Company Zalienople, dated June 7; and similar contracts from the Day-Ward Company without any letter. Each letter from each of the above manufacturers contains this sentence: "It is necessary for you to execute these contracts before we can sell you licensed sanitary enameled ware," and the contract attached to each letter is a Jobber's License Agreement similar to Petitioner's Exhibit No. 11.

Q. Did you sign one of these contracts? A. No, sir.

Q. Have you been able to get the goods of these manufacturers from whom you received contracts, which you did not sign, from those manufacturers? A. No, sir.

Q. You have handed me certain letters which I will offer in evidence as separate exhibits. Will you identify those as being letters received from and sent by you to the various manufacturers whose names appear on those letters?

A. Yes, sir; those were all received and sent by us.

Mr. GROSVENOR: I offer these as "Exhibits Nos. 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, and 255."

Letters referred to were then marked and filed as "Petitioner's Exhibits Nos. 235, 236, 237, 238, 239,

240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254 and 255."

Mr. GROSVENOR: Petitioner's Exhibit No. 235 reads as follows:

"7/6/10.

"Standard Sanitary Mfg. Co.,
Pittsburg, Pa.

"Gentlemen:—

"Referring to the slop sink ordered on our order #20048 would say the catalogue figure should be 1350. Please make this change and ship the same as promptly as possible and oblige,

"JFG-RM Yours truly,"

Petitioner's Exhibit No. 236 reads as follows:

"Pittsburgh, U. S. A., July 11, 1910.

"Jos. F. Grosswiller Supply Co.
Toledo, Ohio.

"Gentlemen:—

"We are in receipt of your valued order #20048 specifying one 18x22" Plate Slop Sink less Faucets, for shipment to Kiel Bros. Plumbing & Heating Co. Wheeling, W. VA. We believe you are thoroughly familiar with the Resale arrangement which has become effective June 6th and it would be necessary for you to sign the Jobbers license agreement in order to secure Licensed Sanitary Enameled Ware. The fixtures as specified on your order is covered by the Resale arrangement and it would be necessary for us to invoice the same at the Resale prices after we have received your signed Jobbers License Agreement.

"Awaiting your advice in this connection, we are,

"Very truly yours,
"STANDARD SANITARY MFG. CO.
"H. J. C. Heckman,
Mgr. Quotation Department."

"HJCH

Petitioner's Exhibit No. 237 reads as follows: 1

"Pittsburgh, U. S. A., July 12, 1910.

"Jos. F. Grosswiller Supply Company,
Toledo, Ohio.

"Gentlemen:—

"We are in receipt of your favor of the 6th relative to slop sink specified on Order #20048, wherein you request us to ship same as promptly as possible.

"We regret to advise we cannot enter this order for shipment until we are in receipt of your signature with resale agreement. Upon receipt of same will give order further attention. 2

"Yours truly,

"STANDARD SANITARY MFG. CO.

"HAC. per H. A. Craig."

Petitioner's Exhibit No. 238 reads as follows:

"Standard Sanitary Mfg. Co.,
Pittsburg, Pa.

"Gentlemen:—

"Replying to your favor of the 11th would say under the circumstances it will be necessary to cancel our order #20048. 3

"Yours truly,

"JFG/RM
"Toledo, O."

Petitioner's Exhibit No. 239 reads as follows:

"8-18-10

"Cahill Iron Works,
Chattanooga, Tenn. 4

"Gentlemen:—

"Referring to our order #20557 for Fig. 142-1/2 lavatories would say we have an order for these for a customer of ours to be installed in a building where they are specified and no other lavatory will answer. We therefore request you to make immediate shipment as the delay will cause our cus-

1 tomer serious inconvenience and will cause his customer considerable damage.

"JFG/RM Yours truly,"

Petitioner's Exhibit No. 240 reads as follows:

"Chattanooga, Tenn., U. S. A.,
Aug. 20, 1910.

"Jos. F. Grosswiller Supply Co.,
Toledo, O.

"Gentlemen:—

2 "Your favor of the 18th is to hand. You must understand that we want all the business that we can get, but it is the same proposition you put up to us several weeks ago. We signed an agreement accepting a license to manufacture goods under this license arrangement. That arrangement says that we are not to sell jobbers unless they have signed a jobber's agreement. We have been told by some jobbers that there are some manufacturers who are not living up to this, but you know us well enough
3 to know that, if we agree to do a thing, we carry it out to the letter. We have written Mr. Wayman and asked him if we could not make exceptions to this rule. He replies to us positively that we are not allowed to break this agreement, that we are only allowed to sell jobbers who have signed the jobbers' agreement. We have been friends for a long time, and you have been good customers of ours, and it is a very disagreeable thing to do to have to decline your orders, but you can see our situation very plainly, and we trust that you will not blame us for
4 our action in this matter. We will be more than glad to fill your order, if you will put us in position to do so by returning to us the jobbers' agreement signed. Otherwise, we are not permitted to do so, by the terms of our license. Whatever opinion you may have of this license agreement, we look upon it as a very binding agreement, and we are not in position to violate same.

"Again hoping that you will not have any unkind

feelings towards us for the position we are compelled 1
to take, and with Mr. Caldwell's kindest regards to
Mr. Grosswiller, we beg to remain

"Yours truly,

"THE CAHILL IRON WORKS,

"FHC/W FHC."

Petitioner's Exhibit No. 241 reads as follows:

"8-22-10

"Cahill Iron Works,
Chattanooga, Tenn. 2

"Gentlemen:—

"We are in receipt of your favor of the 20th and notice with great interest the contents of same. We would say in reply, we are very much in need of the lavatories we ordered on our order #200557, as some of these lavatories are to go on a job the goods have been specified for and nothing else will answer.

"The reason given in your letter of the 20th for not shipping the goods, is not at all satisfactory to us and we must respectfully insist upon your making immediate shipment. If not, we are afraid we 3
will be put to considerable expense and our customer to great inconvenience and hope you will not compel us to be put to this loss.

"The statement that you make in your letter that you are told that some of the manufacturers are not living up to your so called contract, we think is correct as we are informed from very reliable parties that some of the largest manufacturers, who are members of the agreement, are shipping goods to jobbers, who have not signed the so called agreement. However that does not influence us to write a letter 4
of this kind. We need the goods and we sent you the order and if you do not want to ship them on open account, you can ship with B/L attached and we must again insist upon your making immediate shipment.

"With kindest regards to Mr. Caldwell, we remain,

"JFG/RM Yours truly,"

Petitioner's Exhibit No. 242 reads as follows:

"Chattanooga, Tenn., U. S. A.,
August 24, 1910.

"Mr. Jos. F. Grosswiller,
133 Michigan St.,
Toledo, Ohio.

"Dear Sir:—

"Your favor of the 22nd to hand.

"Our letter of the 20th explains our position fully. You were notified in as respectfully and considerate a manner as possible why we could not take your orders and you cannot blame us for declining the order. You took the order after being requested not to do so. There is no occasion for you to lose one cent as the plumber can send the order in direct and get it filled, or can order from some other jobbing who does handle licensed ware. We, of course, do not solicit the plumbing trade, but rather than see you inconvenienced we will make an exception and sell direct in this case.

"Before signing the "So called contract" (as you term it) we consulted the best legal talent we could find at home and in New York, and signed the same with their advice, and when we conclude to break any of the terms we expect to do so in the open and notify Wayman we have done so—give him our reasons and take the consequences—regardless of how other people keep their contracts.

"We do not see what we can add further except to repeat that you were notified and requested not to take orders for our goods, and you cannot blame us at all for the position we are compelled to take.

"At the same time we wrote you, we had to write two or three other parties the same kind of letter we did you, explaining why we could not fill orders, and the same mail that brings your letter, brings an answer from one of these parties that is written in a very different strain from yours. They seem to appreciate the fact that we are not trying to act arbitrary or unaccommodating—but that we are in a

position where we cannot honorably take any other course. 1

These are strangers we never saw, and we cannot understand why Mr. Grosswiller, knowing us as long as he does, cannot look at it the same way.

"Yours very truly,
"THE CAHILL IRON WORKS.
"Per F. H. Caldwell,
President."

"FHC/P

Petitioner's Exhibit No. 243 reads as follows:

"10-1-10 2

"Mr. F. H. Caldwell, Pres.,
Cahill Iron Works,
Chattanooga, Tenn.

"Dear Sir:—

"Some time ago we sent you an order for some lavatories and you very kindly turned down the order for the reason that we did not sign the contract that you sent us. One of our customers here in the city later sent you an order for a one piece sink and you very kindly wrote him that you do not sell to 3 the plumbing trade but would be very glad to furnish the same and charge through the National Supply Co. of your city.

"We understand, from good authority, that the National Supply Co. have not signed this contract, therefore would like to know why you are willing to sell goods to them and not to us. We hardly believe it is to your interest to discriminate in that way and are entitled to some explanation.

"We have always given you most of our business up until the time you consolidated and feel if any 4 preference should be shown to any of the jobbers, it should be shown to us. Will you kindly let us hear from you as to whether you will now fill orders for us or not, and if not, why you fill them for the National Supply Co. We certainly are entitled to treatment equally as good as they are.

"JFG/RM Yours truly,"

Petitioner's Exhibit No. 244 reads as follows:

"Chattanooga, Tenn., U. S. A.,
Oct. 3, 1910.

"Jos. F. Grosswiller Supply Co.,
Toledo, O.

"Gentlemen:—

"Your favor of the 1st addressed to our Mr. Caldwell has been referred to the writer for reply, as Mr. Caldwell is confined to his bed at this time.

"We again desire to assure you that we regret very much not being able to do business with you, but, as explained in former correspondence, it is impossible for us to do so unless you sign the License Agreement.

"We were authorized by the Licensor to sell licensed enameled ware to the concern you named, and we therefore referred the inquiry to which you refer to them, or rather, we gave the plumber their name, together with names of several other jobbers who buy licensed ware.

"We assure you that we should like very much to have your business again and we trust that you can see your way clear to sign License Agreement, copies of which you have.

"Yours truly,

"HWP/W THE CAHILL IRON WORKS."

Petitioner's Exhibit No. 245 reads as follows:

"10-12-10.

"Cahill Iron Works,
Chattanooga, Tenn.

"Gentlemen:—

"Referring to your letter of the 3rd replying to our letter of the 1st would say that the reply you gave us is not very satisfactory and we would like to know why the Licensor would permit you or any other member of the agreement, to sell to anyone

who has not signed the agreement and not to another. 1

"If there is any way that you can put us on the same footing that the other party is on, we would be very glad to be put there, as we are anxious to give you business and in fact we are very much inconvenienced by not being able to give you our business. We lost an order yesterday for 6-18 x 30 fig. F-220, from one of our best customers and have lost quite a number of other orders which we have recorded here.

"Now we certainly can see no reason why we cannot receive the same treatment from you that you give anyone else that is in the same condition that we are and think you are discriminating more by doing what you have done. 2

"We would like very much to hear from you, which we trust will be with a favorable reply.

"JFG/RM Yours truly,"

Petitioner's Exhibit No. 246 reads as follows:

"11-21-10 3

"Cahill Iron Works,
Chattanooga, Tenn.

"Gentlemen:—

"Replying to your favor of the 19th ask you to please include hangers with the Plate F-262.

"We are also in need of 6-F-206 20 x 30 as described in your catalog. Can you ship these on our account? It is necessary for us to have them and we hope you can see your way clear to accept our order and make immediate shipment. 4

"Also hope Mr. Caldwell has recovered from his accident and is now entirely well.

"JFG/RM Yours truly,"

Petitioner's Exhibit No. 247 reads as follows:

"Chattanooga, Tenn., U. S. A.,
Nov. 23, 1910.

"Jos. F. Grosswiller Supply Co.,
Toledo, Ohio.

"Gentlemen:—

"We are in receipt of your favor of the 21st, requesting us to ship plate F-262 drain board with hanger, and we will be governed accordingly. Shipment will be made within the course of the next two or three days.

"In regard to 6 plate F-206 sinks, would state that you, of course, understand our position in the matter, and we would request that you write the Licensor.

"Thanking you for the inquiry, we are

"Yours truly,
"THE CAHILL IRON WORKS,
"HWP-C By H. W. Powel."

Petitioner's Exhibit No. 248 reads as follows:

"11-25-10

"Mr. E. L. Wayman,
Pittsburg, Pa.

"Dear Sir:—

"We had an architect specify 6-Plate F-208 Cahill sinks in a six flat building which was awarded to one of our customers a few days ago.

"Our customer placed the order with us and we wrote to the Cahill Iron Works asking what they would do in regard to the matter and they referred us to you.

"We are compelled to furnish these goods to our customer and as he purchased all of his goods, from us, he of course looks to us to deliver the same to him.

"We therefore write asking you to inform us to whom we will send the order.

"The writer understands the National Supply Co.

of this city are getting goods from all of the Licensed manufacturers and Mr. Collins positively declares upon his word of honor that he has not signed the contract of the Licensors. Under the circumstances we feel we are entitled to the same treatment and hope we will receive it. Awaiting your early reply which we trust will be favorable, we remain, "JFG/RM Yours truly," 1

Petitioner's Exhibit No. 249 reads as follows:

"Nov. 28th, 1910.

"Jos. F. Grosswiller Supply Co., 2
Toledo, Ohio.

"Gentlemen:—

"Replying to your letter of the 25th with reference to your requirements for Cahill goods. About all I can suggest to you is that you buy these goods through some Licensed Jobber.

"Yours very truly,

"E. L. Wayman."

Petitioner's Exhibit No. 250 reads as follows: 3

"Toledo, Ohio, 12/6/10

Your Order A-553-4 Sold to J. F. Grosswiller Sup. Co.,
Our Register K-7187 City.

6-20 x 30" Fig. F-220 Sinks W/ 2 cocks, regular	21.00	39%	126.00	76.86
6-20 x 24" Fig. F-262 W. E. Drain Boards	6.00	48%	36.00	18.72
6-20 x 30" Fig. F-208 Chat. Sinks drilled 2 cocks	36.00	35%	276.00	179.40
				274.98
Less a/c 6 pr. - painted legs	3.00	29½%	18.00	12.69
				262.29

4

1	6-Rubber Mats	1.75	35%	10.50	6.83
	6-Crates	.45			2.70
	3-Crates	.26			.78
	6-Crates	1.25			7.50
					280.10
	Less freight allowance on 3040# 57½ cwt.				17.48
					262.62

"Shipped Direct 11/28/10"

2 Petitioner's Exhibit No. 251 reads as follows:

"10-11-10

"L. Wolff Mfg. Co.,
Chicago, Ill.

"Gentlemen:—

"Kindly quote us by return mail on the following list of fixtures.

1-H-4901/120 gallon ex. hvy. galv. boiler with steam coil.

1-H-4900, 52 gallon galv. mixing chamber.

3 2-H-4582, 2 double sections, 25 ft. each supplied with 15 spouts to each single section. Total 60 spouts. Fitted complete as desc. with soap dishes, white enam. inside, painted outside.

8-H-7737 Automatic syphon jet pressure tank closets.

2-Urinal stalls of hammered glass. Back & sides ¾" thick. Base 1" thick. Washdown pipe polished brass. Loose key stop 4 ft. long, 4 ft. high. White enam. C. I. gutter, arranged for ventilation.

2-9 x 9 H-2118 C. I. painted floor drains.

6-H-6943 drinking fountains with non Syphon C. I. drinking fountain trap, 2" outlet.

4 "EA/RM Yours truly,"

Petitioner's Exhibit No. 252 reads as follows:

"Chicago, Ill., Oct. 13-1910.

"J. F. Grosswiller Supply Co.
Toledo, O.

"Dear Sirs:—

"We have your favor of the 11th. enclosing list

of goods on which you ask us to make you prices. 1

"This is putting the writer in rather an awkward position as he does not like to refuse any request of this kind coming from your company, but he feels under existing conditions, that we will not be able to quote you prices on enameled goods, until after you have signed the contract.

"Regretting that conditions are such that we cannot comply with your request, we remain,

"Yours truly,

"L. WOLFF MFG. COMPANY

"W. Utting." 2

Petitioner's Exhibit No. 253 reads as follows:

"10-15-10

"L. Wolff Mfg. Co.,
Chicago, Ill.

"Gentlemen:—

"Replying to your letter of the 13th would say if you do not wish to give us our cost price on material in our letter of the 11th, kindly give us our selling price to the plumber, so we can quote the different plumbers, as we expect to have all matters arranged in regard to the contract proposition, when the writer goes to Chicago. 3

"We worked very hard to have these goods specified and it was through our influence that the architect specified them and we feel we should have at least the information in regard to the prices to the trade, therefore ask you to be kind enough and send us the same by return mail, without fail and greatly oblige,

"JFG/RM Yours truly," 4

Petitioner's Exhibit No. 254 reads as follows:

"Chicago, Ill., Oct-19-1910.

"J. F. Grosswiller, Supply Co.,
Toledo, O.

"Dear Sirs:—

"We have your favor of the 15th. also your telegram of the 18th. and we regret very much indeed

1 that we are not in a position to change what we state in our letter of the 13th.

"The goods called for are specified from our catalogue, and the architect evidently desires that our goods be installed.

"We regret that we cannot comply with your request and make you the prices you desire.

"Yours truly,

"L. WOLFF MFG. COMPANY

"W. Utting."

2 Petitioner's Exhibit No. 255 reads as follows:

"10-20-10

"L. Wolff Mfg. Co.,
Chicago, Ill.

"Gentlemen:—

"Replying to your letter of the 19th wish to say for your information that if it had not been for the writer, your goods would never have been specified for the job that we sent you the specifications for that you refuse to quote us on. We were the cause
3 of this and no one else and certainly do not at all feel we are being treated fair by being turned down by your not sending us a copy of the prices at least, that you quote to the plumbers. We certainly feel you ought to at least give us that consideration, as you are willing to quote any plumber that is in the market for goods and if we had the plumbers prices in hand, we could quote some of our customers who have been waiting all this time, for prices.

"It was through our influence that Mr. Augur was invited to come here and interview the architects and
4 that these goods were specified, so do not give the credit to any one else but ourselves for causing these specifications to be made up.

"While you may greatly regret not being able to comply with our request, at the same time we consider it anything but right to turn down this proposition as it means the loss of some business to us and money as well.

JFG/RM Yours truly,"

BY MR. GROSVENOR: 1

Q. Petitioner's Exhibit No. 236 is dated July 11, 1910, and is from the Standard Sanitary Manufacturing Company. It acknowledges an order from you and says: "We believe you are thoroughly familiar with the Resale arrangement that has become effective June 6th, and it would be necessary for you to sign the Jobbers License Agreement in order to secure licensed sanitary enameled ware." Petitioner's Exhibit No. 237 says: "We regret to advise we cannot enter this order for shipment until we are in receipt of your signature with Resale Agreement. Upon receipt of same will give order further attention." You did not sign 2 that agreement, did you? A. No, sir.

Q. Were you able to get those goods?

A. No, sir. I think you will find a letter there from the Standard Company cancelling that order.

Q. On your request, when you refused to sign the contract? A. Yes, sir.

Q. Petitioner's Exhibit No. 239 is an order to the Cahill Iron Works for lavatories; in that order you say: "We therefore you request you to make immediate shipment as the delay will cause our customer serious inconvenience and will cause his customer considerable damage." The 3 reply of the Cahill Iron Works, dated August 20, 1910, says: "Your favor of the 18th is to hand. You must understand that we want all the business we can get, but it is the same proposition you put up to us several weeks ago. We signed an agreement accepting a license to manufacture goods under this license arrangement. That agreement says that we are not to sell jobbers unless they have signed a jobber's agreement. We have been told by some jobbers that there are some manufacturers who are not living up to this but you know us well enough to know that, if we agree to do a thing, we carry it out to the letter. We have 4 written Mr. Wayman and asked him if we could not make exceptions to this rule. He replies to us positively that we are not allowed to break this agreement, that we are only allowed to sell jobbers who have signed the jobbers' agreement. We have been friends for a long time, and you have been good customers of ours, and it is a very disagreeable thing to do to have to decline your orders, but you can see our situation very plainly, and we trust that you will not

1 blame us for our action in this matter. We will be more than glad to fill your order, if you will put us in position to do so by returning to us the jobber's agreement signed. Otherwise, we are not permitted to do so, by the terms of our license. Whatever opinion you may have of this license agreement, we look upon it as a very binding agreement, and we are not in position to violate same." Exhibit No. 241 is your reply to this last letter, in which you state, "The reason given in your letter of the 20th for not shipping the goods, is not at all satisfactory to us and we must respectfully insist upon your making immediate ship-
2 ment. If not, we are afraid we will be put to considerable expense and our customer to great inconvenience and hope you will not compel us to be put to this loss." The letter of August 24, being Exhibit No. 242, from the Cahill Iron Works, acknowledges receipt of your letter and says: "At the same time we wrote you we had to write to two or three other parties the same kind of letter we did you, explaining why we could not fill orders, and the same mail that brings your letter, brings an answer from one of these parties that is written in a very different strain from yours. They seem to appreciate the fact that we are not trying to act
3 arbitrary or unaccommodating—but that we are in a position where we cannot honorably take any other course." Were you able to get those goods to which this correspondent refers?

A. Yes, sir; I had to buy them through a jobber.

Q. A jobber located where? A. Toledo.

Q. Your business is that of a jobber, isn't it?

A. Yes, sir.

Q. And you bought from one of your competitors?

A. Yes, sir; the National Supply Company.

Q. Petitioner's Exhibit No. 247 suggests that you write
4 to the Licensor; did you do so? A. Yes, sir.

Q. Who is the Licensor? A. I wrote to Mr. Wayman.

Q. Exhibit No. 248 is your letter to him and Exhibit No. 249 is his reply, dated November 28th, 1910, and saying "Replying to your letter of the 25th with reference to your requirements for Cahill goods. About all I can suggest to you is that you buy these goods through some licensed jobber." Were these goods such goods as you could have obtained from the Kohler people or the Iron City?

A. No, sir. 1

Q. Are they goods of a character which they do not manufacture? A. They do not manufacture them.

Q. Petitioner's Exhibit No. 250 is a bill for the goods which you bought from the National Supply Company, is it not? A. Yes, sir.

Q. And those are the goods which you ordered from the Cahill Iron Works? A. Yes, sir.

Q. How many years have you been doing business with the Cahill Iron Works?

A. I don't know how long he has been in business, but ever since he has been in the business. 2

Q. How long have you been in business?

A. Eleven years.

Q. And you have been doing business with them ever since you have been in business?

A. Ever since they have been in business. I think I did business with them when I was with the Toledo Supply Company.

Q. At what price did you buy from the National Supply Company?

A. The price which they charged was the same price that we get from our customers. 3

Q. Then you made nothing on the transaction? A. No.

Q. Exhibit No. 251 is a letter to the L. Wolff Company and is an order for—

A. It is not an order but an inquiry.

Q. Which of those goods are sanitary enameled iron ware? A. The third and fourth items.

Q. Exhibits No. 255 is the reply of the L. Wolff Company to the inquiry, is it not? A. Yes, sir.

Q. That reads, "We have your favor of the 11th. enclosing list of goods on which you ask us to make you prices. 4

This is putting the writer in rather an awkward position as he does not like to refuse any request of this kind coming from your company, but he feels under existing conditions, that we will not be able to quote you prices on enameled goods, until after you have signed the contract.

Regretting that conditions are such that we cannot comply with your request, we remain,"; now in that first order

1 you were inquiring as a jobber in order to buy at jobbers' prices, is that right? A. Yes, sir.

Q. After receiving that letter, did you direct this letter to the L. Wolff Company (indicating)? A. Yes, sir.

Q. It is known as Exhibit No. 253, and is dated October 15, and reads: "Replying to your letter of the 13th would say if you do not wish to give us our cost price on material in our letter of the 11th, kindly give us our selling price to the plumber, so we can quote the different plumbers, as we expect to have all matters arranged in regard to the contract proposition, when the writer goes to Chicago.

2 We worked very hard to have these goods specified and it was through our influence that the architect specified them and we feel we should have at least the information in regard to the prices to the trade, therefore ask you to be kind enough and send us the same by return mail, without fail and greatly oblige," then, is Exhibit No. 254 the letter which you received in reply to this letter? A. Yes, sir.

Q. And that letter reads: "We have your favor of the 15th, also your telegram of the 18th, and we regret very much indeed that we are not in a position to change what we state in our letter of the 13th.

3 The goods called for are specified from our catalogue, and the architect evidently desires that our goods be installed.

We regret that we cannot comply with your request and make you the prices you desire." Were you able to get those goods?

A. No, sir; I did not make any quotation on those goods because I had no prices.

Q. You could not get the goods at plumbers' prices?

A. No, sir; they would not quote me any price at all, so they state in that letter.

4 Mr. GROSVENOR: That is all.

CROSS EXAMINATION BY Mr. NOBLE:

Q. Mr. Grosswiller, in respect to these goods which you wrote about to the L. Wolff Company, and in respect to which Mr. Grosvenor has just been inquiring, did you get other goods to fill that order or have the specifications changed?

A. I did not have the order, and neither did we figure

on the material, because we could not get prices for that make of goods. 1

Q. In other words, you did not have the order for the goods? A. No, sir; but I will explain that to you—

Mr. NOBLE: Just answer the question.

The WITNESS: I thought I could make it plainer.

Mr. NOBLE: Then you may explain.

A. (Continuing): Mr. H. W. Wachter, of Toledo, is one of our prominent architects and he is a very good friend of mine, or our house, and it was through our influence that Wolff Company's goods were specified in this contract; feeling that we could get prices on those goods, we worked with the architect to have them specified, but after the specifications came out and they asked us for prices, we were unable to quote them for the reason that the L. Wolff Company refused to make any prices. 2

Q. What was the date of the inquiry which you made?

A. I cannot tell from memory; the correspondence there will show that.

Q. The inquiry was first made on the eleventh day of October, then, if I understand you? A. Yes, sir.

Q. You testified in reply to Mr. Grosvenor's question that on June 6th you received a letter from the L. Wolff Company containing copies in duplicate of the Jobber's License Contract, and a letter containing a sentence which Mr. Grosvenor read to you and which was in effect that they could not sell you licensed sanitary enameled iron ware except if you signed a Jobber's License Agreement; is that right? A. Yes, sir. 3

Q. Then, you knew on June 6th that the L. Wolff Company had signed a contract which prevented them from selling to you licensed sanitary enameled iron ware except on those terms? 4

A. I had no means of knowing that they had signed that contract.

Q. They wrote you that, did they not?

A. I suppose they did say something about it.

Q. Didn't Mr. Grosvenor read a letter here saying that they had signed a contract?

A. I gave him the paper, and I do not recall.

Q. Don't you know that the L. Wolff Company wrote

1 you that they could not sell you unless you signed a Jobber's License Contract with them?

A. Yes, sir; I believe they did.

Q. You knew that in October, too?

A. Yes, sir; but I received a letter from the Cahill Iron Works in the meantime, saying that some of the manufacturers were not living up to that agreement and so I took a chance in working on that order.

Q. You took a chance in working on that order before you inquired from the L. Wolff Company? A. Yes, sir.

Q. You could buy those goods from other jobbers, could
2 you not?

A. If I wanted to without making anything on the transaction.

Q. And that was true of the other licensed manufacturers goods, wasn't it? A. Yes, sir.

Q. So if they were specified, you could buy the goods of these manufacturers?

A. Without making profit, which I could not keep up, because I could not do that and pay my rent and buy goods and everything else.

Q. You could have bought them, though?

3 A. I did not try to buy those particular goods.

Q. But other goods you did try to buy and did buy?

A. Yes, sir.

Q. Did you write those letters to Mr. Wolff at the suggestion of anybody? A. No, sir.

Q. Did you write any of these letters of inquiry at the suggestion of anyone? A. No, sir.

Q. The Cahill goods which you refer to in Exhibit No. 248. did you buy those goods from anyone else?

A. I ordered some of them through the Cahill Iron Works and they requested that I have them come through
4 a jobber so that I got them through the National Supply Company of our City.

Q. You got them from the National Supply Company?

A. Yes, sir.

Q. You got those goods then, in the manner which you have just described? A. Yes, sir; without any profit.

Q. But you got those goods in the manner you have described? A. Yes, sir.

Q. Is the same true as to the Cahill lavatories, referred to in Exhibit No. 239, which you ordered?

A. Yes, sir; they are included in that bill. 1

Q. For how many years have you been doing business with the Iron City Manufacturing Company?

A. Why, I think six or seven years.

Q. A large portion of your business was done with them, was it not? A. No, sir.

Q. How much business have you done with Kohler & Son? A. I have never done any business with them.

Q. Your business has been chiefly with the Iron City and the other people named?

A. The largest with the L. Wolff Company and then the Iron City and then the Cahill Iron Works. 2

Q. You still do business with the Iron City Company?

A. Yes, sir.

Q. Who else do you do business with now?

A. The Blairsville Enameled-Iron Company.

Q. That is who else you do business with other than the Iron City Company? A. The Blairsville people.

Q. Do you do business with Louis Lipp? A. No, sir.

Q. Or the Clymer Manufacturing Company?

A. No, sir.

Q. Now, you said in reply to one of Mr. Grosvenor's questions that you obtained goods on orders previous to 3
June 1st, with some of the Companies without contracts?

A. No, with contracts.

Q. Without contracts, I understood you to say?

A. With contracts before June 1st; in other words, we had contracts with some of the enameled ware manufacturers before the licensing agreement came out; that is what I intended to convey in my answer.

Q. Did you obtain goods from companies by simply sending in orders also?

The WITNESS: Sir? 4

Mr. NOBLE: I asked you whether you obtained goods from other companies upon simply sending in orders also, that is, before June 1st?

A. I don't think we had orders in with anyone except the Wheeling Enameled-Iron Company.

Q. I don't think you understood me. Previous to June 1st, and for a long time back, did you from time to time

1 order goods from different manufacturers for specific orders? A. Oh; yes, sir.

Q. And with some of them you had standing contracts as to yearly business?

A. No, sir; I think we have a contract with the Wheeling Enameled-Iron Company for a certain number of tubs, a certain amount of tubs.

Q. Per year? A. Until the order was filled.

Q. You made a contract for a certain amount of goods?

A. Yes, sir; to be taken as wanted.

Q. And did you have similar contracts with the other
2 companies?

A. We had, but I don't think we had at that time with the exception of this one.

Q. What is the general business of the Grosswiller Supply Company?

A. Wholesaler of plumbing and steam fitting supplies.

Q. Your business in sanitary enameled iron ware simply forms a part of your entire business?

A. Yes, sir; it is only a part of our business.

Q. What percentage would you say the sanitary enameled iron ware part of it constituted?

3 A. About twenty-five per cent.

Q. And the rest of your business is devoted to other plumbing supplies? A. Yes, sir; and steam goods.

Q. Steam goods? A. Yes, sir.

Q. The Iron City Company is one of the large manufacturers of sanitary enameled iron ware, is it not?

A. I think so.

Q. And what is the reputation in the trade as to size of the Kohler Company?

A. I don't think I am prepared to answer that.

4 RE-DIRECT EXAMINATION BY Mr. GROSVENOR:

Q. Do you know Mr. E. L. Wayman? A. Yes, sir.

Q. Did you ever have any conferences with him or talks with him respecting the joining or signing of this Jobber's License Agreement? A. Yes, sir.

Q. On what occasion?

A. I called on Mr. Wayman about six or seven weeks ago, I think, in his office at Pittsburgh, to find out if it was possible for us to get enameled ware from the licensed

manufacturers under these conditions and I understood the National Supply Company were— 1

Mr. NOBLE: I object to this unless we have the actual conversation.

Mr. GROSVENOR: Tell what you said to him as far as you can.

The WITNESS: My object in making the trip to Pittsburgh—

Mr. NOBLE: I object to the object of the trip.

Mr. GROSVENOR: State what was said?

The WITNESS: Well, I went to Pittsburgh and called on Mr. Wayman and asked him if he could put us in a position to purchase sanitary enameled iron ware on the same basis as some of our competitors. Mr. Collins of the National Supply Company— 2

Mr. NOBLE: I object to that.

BY Mr. GROSVENOR:

Q. Had you said anything about the National Supply Company? A. I am coming to that now, yes.

Q. What did you say?

A. I told Mr. Wayman I understood from Mr. Collins that the National Supply Company were able to get goods from some of the licensed manufacturers and he claimed positively that the National Supply Company did not sign the contract. I said I wanted to get goods on the same basis. 3

Q. What did he say?

A. He said if I wanted to find out anything about the National Supply Company I should call on Mr. Collins and ask him.

Q. Did he say anything about the contract?

A. He said if I would sign a contract he would give me a letter permitting me to buy goods from manufacturers who were not licensed manufacturers. 4

Q. Was anybody present at that time?

A. I think not, only Mr. Wayman and myself.

Q. Do you know Mr. Ahrens? A. Yes, sir.

Q. Have you had any conversation with him about signing and license agreement? A. No, sir.

1 Q. Or with Mr. Torrance? A. No, sir.

Examination concluded and signing of deposition waived by agreement of counsel for the respective parties.

OSCAR A. KROOS, a witness heretofore produced and sworn, re-called by the Petitioner for continuation of direct examination, testified as follows:

DIRECT EXAMINATION BY Mr. GROSVENOR (continued):

2 Q. Mr. Kroos, you have already been sworn?

A. Yes, sir.

Q. You are Secretary of the J. M. Kohler Sons Company? A. Yes, sir.

Q. At the request of counsel for the Government, have you prepared certain tabulations or calculations showing the net cost to jobbers of various Kohler articles as calculated by the re-sale plan, that is according to the price list known as Petitioner's Exhibit No. 41, and calculated according to the Kohler system, and prices in force and effect June 6th, the two calculations being placed in com-
3 parison with each other in your tabulation?

A. There is one item in there that does not show the the net cost to the jobber, but the price we would have obtained from the jobber under the re-sale plan.

Q. But you have prepared these tabulations along the lines suggested? A. Yes, sir.

Q. Now, I show you a sheet labelled "Five Year Guaranteed Baths, Five Foot Size on Base, Kohler's 'Szarina' Plate A-14 Standard's 'Albion' Plate P-205." Kohler's "Czarina" is the name for the five foot tub in respect to which the calculations are made on this sheet? A. Yes, sir.

4 Q. The Standard's "Albion" is the competing tub of that Company? A. Yes, sir.

Q. That is the tub with which the "Czarina" competes?

A. Yes, sir.

Q. The first column which reads "Jobber's Cost. Resale Plan Schedule 1 Page 32.", by "Jobber's Cost", you mean there the cost of the jobber in buying from the manufacturer according to the system then described in this sheet?

A. Yes, sir.

Q. By "Resale Plan", which is according to Exhibit No. 41, you mean this price list (indicating)? A. Yes, sir. 1

Q. In Schedule 1 means the tub is taken from the Schedule 1 which is taken in that price list? A. Yes, sir.

Q. "Page 32" means page 32 of Schedule 1 stated in that price list? A. Yes, sir.

Q. Then on the third horizontal line it reads, "General Zone Pittsburgh"; then "Zone 1, Buffalo"; "Zone 2, New Orleans" and so on down to Zone 11 which is "Phœnix"?

A. Yes, sir.

Q. In making these tabulations on this sheet have you used this price list which is Exhibit No. 41? A. Yes, sir. 2

Q. And the several zones there referred to as the general zones are the zones described in this price list?

A. Yes, sir.

Q. And the names of the cities which you have inserted are typical jobbing points in the zones under which they are placed? A. Yes, sir.

Q. And those points are given in this price list?

A. Yes, sir.

Q. Now, returning to the first perpendicular column, the first line of which reads as I have stated, the next line states "Resale List", opposite that, under the head "General Zone Pittsburgh", is stated $83.75; now that is the list price stated in this Wayman price list, which is Petitioner's Exhibit No. 41, at page 32 of Schedule 1 for the five foot guaranteed tubs; is that right? A. Yes, sir. 3

Q. On that page of that price list at the top of the page are given the names of several tubs, that is the "Rico of the Day-Ward Company; the "Mozello" of the Iron City; the "Czarina" of the Kohler Company and the "Albion" of the Standard, the "Colona" of the United States and the "Neptuna" of the Wolff Company? A. Yes, sir.

Q. The next line states, "Resale Carload Discount"; by that you mean the resale carload discount as stated on this same page? A. Yes, sir. 4

Q. The next column under the General Zone says "45%"; what do you mean by that?

A. That is the carload discount.

Q. For the General Zone?

A. For the General Zone; yes, sir.

Q. As given by this price list?

1 A. As given in that resale price list.

Q. And under the tabulation on that page? A. Yes, sir.

Q. This page gives the discount for the several zones? A. Yes, sir.

Q. Now, the next figure is $37.69; how did you get that? A. That is the discount applied to the list.

Q. You multiply $83.75 by 45 per cent. and that gives you $37.69? A. Yes, sir.

Q. Under that is given $46.06; is that obtained by subtracting from $83.75 the figure $37.69? A. Yes, sir.

Q. And that gives you $46.06, which is the price to the
2 jobber omitting the discount which we will consider hereafter? A. Yes, sir.

Q. In the next line is stated "7½% Jobber's Discount on Invoice"; where do you get that?

A. From the Jobber's License Agreement, Article 1.

Q. I show you what is a license agreement, marked Petitioner's Exhibit No. 11, and ask you if that 7½% discount is taken from what is stated on the first page there "Schedule No. 1, Five Year Guarantee"? A. Yes, sir.

Q. Now you get the $3.45? A. Yes, sir.

Q. And you subtract that from $46.06, and that gives
3 you $42.61? A. Yes, sir.

Q. That is the price to the jobber after being allowed this regular discount of 7½ per cent.? A. Yes, sir.

Q. The next line gives the item "Crating" at sixty cents? A. Yes, sir.

Q. Where do you get that?

A. From the resale price book.

Q. Where do you get that provision in the resale price book, which is Petitioner's Exhibit No. 41?

A. On page 18, boxing, crating and miscellaneous net charges; "Crating baths, domestic shipment, 60 cents each".

4 Q. Then, adding that 60 cents you then have $43.21 in the next line; then the next line says "Freight Allowance—575 lbs", and opposite that in the second perpendicular column is 24 cents, and then $1.38; state where you get those figures, please?

A. The rate there is 25 cents per hundred weight from Sheboygan to Pittsburgh on bathtubs on carload lots.

Q. And the weight is 575 pounds? A. Yes, sir.

Mr. NOBLE: You said from Sheboygan to Pittsburgh? 1

The WITNESS: Yes, sir.

BY Mr. GROSVENOR:

Q. Why do you make the freight allowance; where is that found?

A. The resale price book specifies that the prices in the books are f. o. b. cars factory, with all freight allowances.

Q. I direct your attention to Paragraph 2 of the Petitioner's Exhibit No. 11; read that, will you, please?

A. (Reading): "Goods will be sold f. o. b. purchaser to the cars where the factory is located, at the prices given in the resale sheet for the various zones, subject to the discounts and rebates, with full freight allowed on shipment of 200 pounds and over, subject to the freight tariff regulations herein provided for." 2

Mr. NOBLE: What paragraph is that?

Mr. GROSVENOR: Paragraph 2 of the Jobber's License Agreement.

Q. That regulation is also stated in Petitioner's Exhibit No. 41, where? A. On page 2 of the General Conditions. 3

Q. Will you read that?

A. (Reading): "Goods will be sold to the purchaser f. o. b. cars where the factory is located at the prices given in the Resale Agreement for the various zones, with full freight allowed on shipments of 200 pounds and over, subject to the freight tariff regulations herein provided for."

Q. And on page 4 it is also given, is it not? A. Yes, sir.

Q. Now, you say, the freight from Sheboygan to Pittsburgh per hundred pounds is 24 cents? A. Yes, sir.

Q. You calculate the weight at 575 pounds—

A. (Interrupting): Yes.

Q. (Continuing): And the freight from that weight and you get 1.38? A. Yes, sir. 4

Q. That is the allowance under the contract to the jobbers? A. Yes, sir.

Q. Then you subtract that from the figure above and you get the net cost to the jobbers so far of $41.83?

A. Yes, sir.

Q. In the next line of the first perpendicular column

1 the words "Rebates, 5% for Confining Purchases"; where do you get that?

A. From the Jobber's License Agreement, Article 7.

Q. Read that, please?

A. (Reading): "If all the conditions of this Agreement have been complied with and you have confined your purchases to the licensed manufacturers, we will pay you rebates on such purchases as you have made from us as follows: Schedule No. 1, five year guaranteed baths, foot pool, Sitz and Childs and receptors, 5 per cent."

Q. Then you multiply $41.83 by 5 per cent. and you get
2 $2.09? A. Yes, sir.

Q. And you subtract that from $41.83 and get $39.74?

A. Yes, sir.

Q. That is the cost so far? A. Yes, sir.

Q. In the next line are the words "5% for Tonnage. Based on Purchases of $30,000." Where do you get that?

A. From Article 8 of the License Agreement.

Q. That reads how?

A. (Reading): "If your purchases, of material less returned goods covered by the various schedules of the following manufacturers licensed under the patent enumerated
3 hereinbefore"—then follows an enumeration of the 16 licensed manufacturers—"have aggregated sums as follows, and if all the conditions of this Agreement have been complied with, the Company will pay the purchaser rebates on such purchases as they have made from the Company during the period ending December 31, 1910, as follows: $10,000, 2½ per cent.; $15,000, 3 per cent.; $20,000, 3½ per cent.; $25,000, 5 per cent.; $30,000, 5 per cent."

Q. You have then estimated the purchases to be $30,000?

A. Yes, sir.

Q. And multiplying that you get $1.99, which you sub-
4 tract from $39.74 and you get $37.75, which is the net cost to the jobber; is that right?

A. That is, it is the net price which we obtain from the jobber under the resale plan.

Q. That is what you would receive from the jobber according to the resale price? A. Yes, sir.

Q. So that in calculating the actual cost to the jobber, he has to pay the carload weight from Sheboygan to Pittsburgh?

A. Yes, sir; freight would have to be added to that net

amount shown on the sheet there in order to arrive at the jobber's cost, for the reason that we have already allowed it in the calculation there. 1

Q. The calculation which we have thus far made has been according to the resale price list?

A. Yes, sir; as we interpret it.

Q. Now, I direct your attention to the rest of this first perpendicular column which begins, "Kohler's Price June 6th, 1910"; by that you mean the price that you were obtaining in your sale?

A. It was the general price which we were obtaining at that time. 2

Q. The first item is "List"; then in the second column it says $58.50; that is the price at which the "Czarina" tub was listed? A. Yes, sir.

Q. Then the "Jobber's Carload Discount on Invoice—20-10-5 & 5"?

A. Those were the discounts we allowed the jobbers on that particular tub.

Q. That amounted to $20.49, is that right? A. Yes, sir.

Q. Subtracting that from $58.50 you get $38.01?

A. Yes, sir.

Q. Did you charge for crating? A. Yes, sir. 3

Q. That is itemized at 50 cents? A. Yes, sir.

Q. Adding that to $38.01 you get $38.51; then you made an allowance for freight, which you calculate at 575 freight allowance, 24 cents a pound, $1.38; subtracting that $1.38 leaves "Net Cost to the Jobber" $37.13; by that "Net cost to the jobber" you mean what you receive?

A. The net price we received from the jobber at that time.

Q. The next line is "Jobber's Net Cost. Resale Plan" and "$37.75" and "Kohler's Net Price to Jobber" at "37.13"? A. Yes, sir. 4

Q. Are those your calculations? A. Yes, sir.

Q. Now, you have made up the calculations on this sheet? A. Yes, sir.

Q. You have given these 37 sheets containing calculations in the manner which I have indicated for each of the 11 zones? A. Yes, sir.

Q. Did you make up all the calculations?

A. Well, I made up the majority of them, but I had some clerical help in connection with them.

Q. Those you did not calculate, did you check them up?

A. Yes, sir; I checked up all of those I did not calculate.

Q. So you have been over all of these figures?

A. Yes, sir.

Q. Now, we have been over the calculations for the General Zone, Pittsburgh; there are 11 other perpendicular columns, one for each of the 11 zones, and in the same way you have calculated for each of those zones the cost to the jobber according to the resale and the cost to the jobber according to the prices before the resale plan went into effect, is that right? A. Yes, sir.

Q. And stating at the bottom of the page the net increase in cost to the jobber and the per cent. of increased cost? A. Yes, sir; which we would have obtained.

Q. If you had entered into the licensing arrangement and adopted the resale prices? A. Yes, sir.

Q. The first sheet, No. 1, is for the five year guaranteed bath, 5 foot size on base, which we have been over and that shows the amount of increase for that five year guaranteed bath to be as follows: General Zone, 1.7—

Mr. NOBLE: You are using the word "cost". The witness says that is the price they would have obtained?

BY Mr. GROSVENOR:

Q. Is that right?

A. Yes, sir; the price we would have obtained under the resale plan.

Q. Then, this per cent. is the per cent. of the increased price?

A. That per cent. is the increase which we would have obtained on those various articles in the various zones in the jobbing trade if we had gone into this licensing arrangement and sold our product under the licensing agreement in effect at the time it was put into effect.

Mr. NOBLE: In other words, it does not represent anything about the price which the jobber has to pay but the percentage according to your understanding of the resale plan which you would have obtained if you had taken the license and sold the goods at those prices?

The WITNESS: Yes, sir.

Q. That is, if you had sold your goods according to the prices established by Exhibit No. 41 on many of the sheets of which articles manufactured by you are stated, you would have obtained these increased per cents? 1

A. Yes, sir.

Mr. GROSVENOR: This sheet for the five year guaranteed five foot bath show the following percentages in the various zones: General Zone, 1.7; Zone #1, 1.6; Zone #2, 9.2; Zone #3, 5.5; Zone #4, 8.3; Zone #5, 10.5; Zone #6, 8.8; Zone #7, 9.5; Zone #8, 9.2; Zone #9, 8.8; Zone #10, 6.9; Zone #11, 8.2. 2

Q. Now, the second sheet, page 2, if for a "5 Year Guaranteed Bath 5 Ft. Size Kohler's 'Carlton' Plate A-38 Standard's 'Luxuria' Plate P-186"; the first column reading "Jobber's Cost. Resale Plan Schedule 1. Page 17". I now direct your attention to page 17 in Schedule No. 1 of Petitioner's Exhibit No. 41; at the top of that page it gives the names of certain baths? A. Yes, sir.

Q. There is stated the Kohler's "Carlton", is that right?

A. Yes, sir.

Q. And that "Luxor", is that the same as the "Luxuria"? A. Yes, sir. 3

Q. Kohler's "Carlton" is the same price which you have on this sheet? A. Yes, sir.

Q. And the Standard "Luxuria" Plate P-186—can you find that in the Standard catalogue?

A. It is on page 77 of the Standard catalogue.

Q. What page is it in your catalogue? A. Page 19.

Q. Is that the tub that competes with the "Luxuria"?

A. Yes, sir.

Q. This price list says that it is known as the "Luxor"; is that the same as the "Luxuria"? A. Yes, sir. 4

Mr. GROSVENOR: Sheet No. 2 shows the per cent. of increased cost and the prices which you would have obtained if you had entered into this agreement; the per cent. of increased cost on these baths is as follows: General Zone, 1.8; Zone #1, 1.7; Zone #2, 10.7; Zone #3, 6.8; Zone #4, 9.4; Zone #5, 11.4; Zone #6, 9.7; Zone #7, 10.8; Zone #8, 10.4; Zone #9, 9.7; Zone #10, 7.3; Zone #11, 9.7.

1 The third sheet is for the "5 Year Guaranteed Bath 5 Ft. Size Kohler's 'Hanover' Plate A-50 Standard's 'Morris' Plate P-176". Is the "Morris" the Standard's tub with which Kohler's "Hanover" competed? A. Yes, sir.

Q. At or about June 1, 1910, what were the price you quoted to the jobbers about the same as the Standard's were? A. As far as we knew they were.

Q. This sheet is calculated in the same manner as the others?

A. Yes, sir; they are all calculated in the same way.

2 Mr. GROSVENOR: I will then ask the stenographer to write into the record the percentages on each of these sheets.

Mr. NOBLE: Are you offering each of those sheets in evidence?

Mr. GROSVENOR: No, I only want to read into the record the percentages shown on each sheet.

Mr. NOBLE: I object to that unless each calculation is put in. How else can we test it?

Mr. GROSVENOR: Well, I will offer the 38th sheet
3 in evidence and I will ask the stenographer to write into the record the per cent. which has been calculated as has been testified to and which appears at the bottom of every sheet.

Mr. NOBLE: That will be all right.

Mr. GROSVENOR: I offer these 38 sheets, then, as Petitioner's Exhibit No. 256.

Tabulations referred to was then marked and filed as "Petitioner's Exhibit No. 256."

Mr. GROSVENOR: The per cent. of increased cost on the baths named on page 3 are as follows:
4 General Zone, 1.4; Zone ±1, 1.4; Zone ±2, 8.9; Zone ±3, 6.2; Zone ±4, 8.6; Zone ±5, 9.4; Zone ±6, 7.7; Zone ±7, 7.5; Zone ±8, 7.2; Zone ±9, 6.5; Zone ±10, 5.3; Zone ±11, 5.3.

Page 4, "2 Year Guaranteed Bath 5 Ft. Size, Kohler's 'Trimo' Plate A-90", the increased per cent. is: General Zone, 6.8; Zone ±1, 6.6; Zone ±2, 21.7; Zone ±3, 15.4; Zone ±4, 18.4; Zone ±5, 21.7; Zone ±6, 18.4; Zone ±7, 18.8; Zone ±8, 17.5; Zone ±9, 15.0; Zone ±10, 13.6; Zone ±11, 13.1.

Page 5, "Non-Guaranteed Bath 5 Ft. Size Kohler's 'X' Tub Standard's 'Nemo', the increased per cent. of cost is: General Zone, 8.0; Zone #1, 7.8; Zone #2, 27.5; Zone #3, 18.7; Zone #4, 22.5; Zone #5, 27.0; Zone #6, 22.4; Zone #7, 22.7; Zone #8, 21.1; Zone #9, 18.9; Zone #10, 16.4; Zone #11, 15.5. 1

Page 6, "Pedestal Lavatory Kohler's 'Fairfax' Plate a-151 Standard's Plate P-500-¾", the per cent. of increased cost is: General Zone, 16.8; Zone #1, 16.7; Zone #2, 26.8; Zone #3, 20.9; Zone #4, 24.5; Zone #5, 28.4; Zone #6, 23.9; Zone #7, 25.7; Zone #8, 25.4; Zone #9, 26.8; Zone #10, 22.8; Zone #11, 26.3. 2

On page 7, "Pedestal Lavatory Kohler's 'Waldorf' 20 x 28" Plate a-175 Standard's 'Copley' 18 x 27 P-500-¼", the per cent. of increased cost is: General Zone, 8.8; Zone #1, 8.8; Zone #2, 15.2; Zone #3, 11.5; Zone #4, 12.8; Zone #5, 15.7; Zone #6, 11.9; Zone #7, 13.2; Zone #8, 14.9; Zone #9, 14.0; Zone #10, 11.0; Zone #11, 13.2.

On page 8, "Square Flat Back Lavatory 18 x 24" Slab, 10" Back Kohler's 'Emmet' Plate A-332 Standard's 'Ophir' Plate P-514", the per cent. of increased cost is: General Zone, 6.9; Zone #1, 6.8; Zone #2, 20.9; Zone #3, 12.6; Zone #4, 16.3; Zone #5, 19.8; Zone #6, 15.7; Zone #7, 18.9; Zone #8, 19.2; Zone #9, 18.0; Zone #10, 12.8; Zone #11, 18.0. 3

On page 9, "Half-Circle Apron Lavatory Without Back 18 x 21 Slab Kohler's 'Walton' A-566 Wolff's 'Deland' H-4032", the per cent. of increased cost is: General Zone, 12.0; Zone #1, 12.0; Zone #2, 25.8; Zone #3, 17.9; Zone #4, 21.3; Zone #5, 26.0; Zone #6, 19.3; Zone #7, 22.4; Zone #8, 21.3; Zone #9, 22.2; Zone #10, 22.2; Zone #11, 19.7. 4

On page 10, "Half-Circle Flat Back Lavatory with Apron 18 x 21" Slab. 8" Back Kohler's 'Bretton' Plate A-580 Standard's 'Othello' Plate P-535", the per cent. of increased cost is: General Zone, 8.6; Zone #1, 8.6; Zone #2, 23.9; Zone #3, 14.6; Zone #4, 18.8; Zone #5, 26.9; Zone #6, 20.1; Zone #7, 25.6; Zone #8, 25.7; Zone #9, 26.4; Zone #10, 20.3; Zone #11, 27.4.

Page 11, "Half-Circle Flat Back Lavatory Without

Apron 16 x 19" Slab. 6" Back Kohler's 'Clare' Plate A-606 Standard's 'Crescent' Plate P-558", the per cent. of increased cost is: General Zone, 10.7; Zone #1, 10.6; Zone #2, 26.6; Zone #3, 16.7; Zone #4, 20.1; Zone #5, 24.9; Zone #6, 18.5; Zone #7, 20.5; Zone #8, 21.3; Zone #9, 21.3; Zone #10, 13.6; Zone #11, 20.9.

Page 12, "Half-Circle Flat Back Lavatory Without Apron 18 x 21" Slab. 8" Back Kohler's 'Clare' Plate A-608 Standard's 'Beverly' Plate P-552", the per cent. of increased cost is: General Zone, 8.2; Zone #1, 8.2; Zone #2, 22.6; Zone #3, 14.0; Zone #4, 18.6; Zone #5, 24.7; Zone #6, 17.7; Zone #7, 20.3; Zone #8, 20.8; Zone #9, 19.2; Zone #10, 16.5; Zone #11, 17.4.

Page 13, "Half-Circle Apron Lavatory with Sides 18 x 21" Slab. 6" Back. Kohler's 'Altona' Plate A-642 United States Sanitary Mfg. Plate B-132", the increased per cent. of cost is: General Zone, 17.5; Zone #1, 17.4; Zone #2, 29.0; Zone #3, 20.9; Zone #4, 25.8; Zone #5, 31.4; Zone #6, 24.6; Zone #7, 26.4; Zone #8, 25.8; Zone #9, 26.0; Zone #10, 22.2; Zone #11, 24.3.

Page 14, "Corner Apron Lavatory 19" on Side. 8" Back. Kohler's 'Osborne' Plate A-672 Standard's 'Anglo' Plate P-531", the per cent. of increased cost is: General Zone, 7,0; Zone #1, 7.0; Zone #2, 19.7; Zone #3, 12.2; Zone #4, 15.4; Zone #5, 19.7; Zone #6, 14.1; Zone #7, 16.6; Zone #8, 15.8; Zone #9, 16.4; Zone #10, 12.3; Zone #11, 15.4.

Page 15, "Corner Apron Lavatory 16½" on Side. 6" Back. Kohler's 'Kingston' Plate A-692 Standard's 'Berlin' Plate P-529", the per cent. of increased cost is: General Zone, 7.4; Zone #1, 7.1; Zone #2, 17.7; Zone #3, 11.1; Zone #4, 14.5; Zone #5, 19.0; Zone #6, 13.5; Zone #7, 16.1; Zone #8, 15.4; Zone #9, 15.1; Zone #10, 10.9; Zone #11, 14.3.

Page 16, "Corner Non-Apron Lavatory 19" on Side. 8" Back. Kohler's 'Oliver' Plate A-712 Standard's 'Everett' Plate P-554", the per cent. of increased cost is: General Zone 6.9; Zone #1, 6.9; Zone #2, 19.2; Zone #3, 11.9; Zone #4, 16.5; Zone #5, 21.3; Zone #6, 15.5; Zone #7, 18.5; Zone

#8, 18.5; Zone #9, 19.4; Zone #10, 13.3; Zone #11, 19.5. 1

Page 17, "Corner Non-Apron Lavatory 16½" on Side. 6" Back. Kohler's 'Kennedy' Plate A-732 Standard's 'Yale' Plate P-559", the per cent. of increased cost is: General Zone, 23.1; Zone #1, 23.0; Zone #2, 40.5; Zone #3, 29.4; Zone #4, 34.8; Zone #5, 45.1; Zone #6, 35.1; Zone #7, 40.4; Zone #8, 40.3; Zone #9, 40.2; Zone #10, 33.8; Zone #11, 41.0.

Page 18, "Half-Circle Non-Apron Flat Back Lavatory 14" Slab. 12" Basin. 8" Back. Kohler's 'Midget' Plate A-752 Standard's 'Alva' Plate P-561", the per cent. of increased cost is: General Zone, 12.6; Zone #1, 12.6; Zone #2, 25.3; Zone #3, 17.8; Zone #4, 21.5; Zone #5, 26.8; Zone #6, 21.8; Zone #7, 24.2; Zone #8, 22.9; Zone #10, 19.4; Zone #11, 22.0. 2

Page 19, "Corner Non-Apron Lavatory 15" on Side. 5" Back. Kohler's 'Bijou' Plate A-762 Standard's 'Aida' Plate P-562", the per cent. of increased cost is: General Zone, 11.0; Zone #1, 11.0; Zone #2, 26.4; Zone #3, 17.9; Zone #4, 22.0; Zone #5, 27.8; Zone #6, 21.6; Zone #7, 25.4; Zone #8, 24.2; Zone #9, 24.5; Zone #10, 18.9; Zone #11, 24.6. 3

Page 20, "Alcoves Design Drinking Fountain With Strainer and Connection to Wall Kohler's 'Geneva' Plate A-989 Standard's 'Alcove' Plate P-636-A", the per cent. of increased cost is: General Zone 11.2; Zone #1, 11.1; Zone #2, 15.1; Zone #3, 12.8; Zone #4, 12.8; Zone #5, 12.4; Zone #6, 10.9; Zone #7, 10.1; Zone #8, 9.4; Zone #9, 11.1; Zone #10, 10.2; Zone #11, 7.6.

Page 21, "One-piece Roll Rim Sink 20 x 30" Size Kohler's Plate A-1036 Standard's Plate P-1200", the per cent. of increased cost is: General Zone, 15.1; Zone #1, 15.0; Zone #2, 29.0; Zone #3, 20.9; Zone #4, 24.5; Zone #5, 31.3; Zone #6, 23.5; Zone #7, 26.4; Zone #8, 25.8; Zone #9, 22.1; Zone #10, 20.9; Zone #11, 25.6. 4

Page 22, "Roll Rim Sink Combination with Back and End Pieces. 20 x 30 " Size Kohler's Plate A-1066 Standard's Plate P-1208", the per cent. of increased

cost is: General Zone, 14.4; Zone #1, 14.3; Zone #2, 27.9; Zone #3, 19.8; Zone #4, 22.3; Zone #5, 28.6; Zone #6, 21.6; Zone #7, 21.5; Zone #8, 21.7; Zone #9, 16.1; Zone #10, 15.4; Zone #11, 17.3.

Page 23, "Roll Rim Sink Combination with two 18" long Enameled Drain Boards and long Back, on 2 Painted Legs and 2 Painted Brackets 20 x 30" Size. Kohler's Plate A-1076 Standard's Plate P-1233", the per cent. of increasedc cost is: General Zone, 26.6; Zone #1, 26.4; Zone #2, 38.2; Zone #3, 30.8; Zone #4, 32.9; Zone #5, 38.4; Zone #6, 31.5; Zone #7, 31.7; Zone #8, 31.8; Zone #9, 27.0; Zone #10, 27.8; Zone #11, 28.3.

Page 24, "Roll Rim Sink Combination with Enameled Drain Board and long Back, on Painted Wall-Brackets—20 x 30" Size Kohlers' Plate A-1086 Standard's Plate P-1220", the per cent. of increased cost is: General Zone 12.0; Zone #1, 12.0; Zone #2, 21.5; Zone #3, 15.8; Zone #4, 17.7; Zone #5, 22.5; Zone #6, 16.9; Zone #7, 18.7; Zone #8, 17.2; Zone #9, 14.7; Zone #10, 13.4; Zone #11, 15.4.

Page 25, "Interchangeable Drain Board 20 x 24" Size. Kohler's Plate A-1125 Standard's Plate P-1256-A", the per cent. of increased cost is: General Zone, 14.1; Zone #1, 14.0; Zone #2, 29.5; Zone #3, 20.1; Zone #4, 24.5; Zone #5, 32.5, Zone #6, 25.0; Zone #7, 28.7; Zone #8, 27.3; Zone #9, 23.2; Zone #10, 20.1; Zone #11, 31.4.

Page 26, "Regular Flat Rim Kitchen Sink 18 x 30" Size. Kohler's Plate A-1140 Standard's Plate P-1415", the per cent. of increased cost is: General Zone, 8.1; Zone #1, 8.1; Zone #2, 23.1; Zone #3, 14.0; Zone #4, 16.3; Zone #5, 23.7; Zone #6, 16.6; Zone #7, 18.9; Zone #8, 19.2; Zone #9, 14.5; Zone #10, 12.3; Zone #11, 17.4.

Page 27, "Round Corner Kitchen Sink 20 x 30" Size. Kohler's Plate A-1156 Standard's Plate P-1418", the per cent. of increased cost is: General Zone, 8.3; Zone #1, 7.8; Zone #2, 18.6; Zone #3, 12.9; Zone #4, 16.1; Zone #5, 20.8; Zone #6, 15.9; Zone #7, 18.0; Zone #8, 17.8; Zone #9, 16.1; Zone #10, 13.7; Zone #11, 18.6.

Page 28, "Deep Pattern Roll Rim Sink Back 12"

high, 30" long. Kohler's Plate A-1170 Standard's Plate P-1421", the per cent. of increased cost is: General Zone, 4.9; Zone #1, 4.9; Zone #2, 16.0; Zone #3, 10.4; Zone #4, 12.8; Zone #5, 18.0; Zone #6, 11.8; Zone #7, 12.4; Zone #8, 11.6; Zone #9, 7.7; Zone #10, 7.4; Zone #11, 9.1. 1

Page 29, "Shallow Pattern Roll Rim Sink Back 12" high, 30" long. Kohler's Plate A-1176 Standard's Plate P-1420", the per cent. of increased cost is: General Zone, 5.4; Zone #1, 5.3; Zone #2, 16.0; Zone #3, 10.9; Zone #4, 13.8; Zone #5, 19.3; Zone #6, 11.7; Zone #7, 11.7; Zone 8, 12.3; Zone #9, 8.1; Zone #10, 7.0; Zone #11, 10.0. 2

Page 30, "One-piece Roll Rim Slop Sink. 16 x 20 x 12" Size. On Trap Standard. Kohler's Plate A-1200. Standard's Plate P-1340", the per cent. of increased cost is: General Zone, 3.8; Zone #1, 3.7; Zone #2, 12.6; Zone #3, 7.5; Zone #4, 9.0; Zone #5, 13.0; Zone #6, 7.6; Zone #7, 8.3; Zone #8, 7.7; Zone 9, 4.2; Zone #10, 3.5; Zone #11, 3.8.

Page 31, "Roll Rim Slop Sink with Separate Back. 16 x 20 x 12" Size. On Trap Standard. Kohler's Plate A-1206. Standard's Plate P-1350", the per cent. of increased cost is: General Zone, 6.3; Zone #1, 6.3; Zone #2, 15.2; Zone #3, 10.0; Zone #4, 11.2; Zone #5, 13.6; Zone #7, 8.9; Zone #8, 7.4; Zone #9, 5.7; Zone #10, 4.9; Zone #11, 3.4. 3

Page 32, "Flat Rim Square Slop Sink with End Outlet and N. P. Strainer 16 x 20 x 12" Size Kohler's Plate A-1230 Standard's Plate P-1402", the per cent. of increased cost is: General Zone, 11.1; Zone #1, 11.1; Zone #2, 20.2; Zone #3, 15.9; Zone #4, 18.1; Zone #5, 21.5; Zone #6, 17.6; Zone #7, 19.9; Zone #8, 19.7; Zone #9, 17.3; Zone #10, 9.9; Zone #11, 19.0. 4

Page 33, "Flat Rim Laundry Tubs on Pedestals with Soap Cups and Plugs Kohler's Plate A-1260 Standard's Plate P-1296", the per cent. of increased cost is: General Zone, 8.7; Zone #1, 8.6; Zone #2, 25.2; Zone #3, 15.2; Zone #4, 17.7; Zone #5, 18.0; Zone #6, 13.4; Zone #7, 11.9; Zone #8, 11.8; Zone #9, 8.2; Zone #10, 12.5; Zone #11, 7.6.

Page 34, "Closet Bowl with Brass Flush Spud

Kohler's Plate A-1299 Standard's Plate P-831", the per cent. of increased cost is: General Zone, 6.6; Zone #1, 6.6; Zone #2, 13.6; Zone #3, 10.0; Zone #4, 11.6; Zone #5, 14.7; Zone #6, 11.9; Zone #7, 12.5; Zone #8, 12.3; Zone #9, 9.7; Zone #10, 8.8; Zone #11, 11.6.

Page 35, "Large Size Low Closet Tank Kohler's Plate A-1321 Standard's Plate P-942", the per cent. of increased cost is: General Zone 8.1; Zone #1, 8.1; Zone #2, 18.2; Zone #3, 12.3; Zone #4, 13.2; Zone #5, 16.5; Zone #6, 11.2; Zone #8, 8.8; Zone #9, 4.2; Zone #10, 6.0; Zone #11, 2.2.

Page 36, "Roll Rim High Closet Tank 20 x 10 x 10" Size Kohler's Plate A-1337 Standard's Plate P-946", the per cent. of increased cost is: General Zone, 23.4; Zone #1, 23.3; Zone #2, 39.1; Zone #3, 29.1; Zone #4, 32.0; Zone #5, 39.1; Zone #6, 30.5; Zone #7, 32.2; Zone #8, 31.4; Zone #9, 27.0; Zone #10, 27.6; Zone #11, 28.4.

Page 37, "One-piece Roll Rim Public Urinal With Wall Hanger and Brass Beehive Strainer 30" Size Kohler's Plate A-1476 Standard's Plate P-1692", the per cent. of increased cost is: General Zone, 12.8; Zone #1, 12.6; Zone #2, 23.2; Zone #3, 17.8; Zone #4, 20.9; Zone #5, 26.3; Zone #6, 21.4; Zone #7, 25.8; Zone #8, 25.7; Zone #9, 23.7; Zone #10, 21.0; Zone #11, 27.4.

Mr. GROSVENOR: I want to state that I will withdraw Petitioner's Exhibit No. 209 which has been heretofore offered in evidence and the testimony referring to it, except insofar as the question refers to the position of the witness Kroos with the Kohler Company.

Mr. NOBLE: All right.

BY MR. GROSVENOR:

Q. The fourth page of this tabulation known as Petitioner's Exhibit No. 256, gives the calculation for the two year guaranteed baths, Kohler's "Trimo"; what type of bath has the most extensive sale in the trade?

Mr. NOBLE: Is this witness qualified to answer that question?

BY MR. GROSVENOR: 1

Q. Do you follow the sales of your goods? A. Yes, sir.

Q. You know the extent of sales of your various articles? A. Yes, sir.

Q. Which have the most extensive sales?

A. The two year guaranteed baths.

MR. NOBLE: Is that the one just called the "Trimo"?

THE WITNESS: Yes, sir.

Q. Is this the kind of tub advertised on page 1 of Schedule 2 of the price list known as Petitioner's Exhibit No. 41? 2

A. Page 1 of Schedule 2; yes, sir; that is the tub.

Q. The fifth sheet is for the non-guaranteed bath, five foot size, Kohler's "X" tub, Standard's "Nemo"; that is according to the Resale Plan, Schedule 1, page 1; is that right? A. Yes, sir.

Q. And the "Nemo" of the Standard is the one with which your "X" tub competed? A. Yes, sir.

Q. Sheet No. 6, is a calculation made out for a pedestal lavatory, Kohler's "Fairfax", Plate A-151, Standard's Plate p-500-¾; those two lavatories were manufactured and sold by your Company and the Standard Company and for competing lavatories? A. Yes, sir. 3

Q. That is made out according to the Resale Plan, Schedule 1, page 2-B, is that right? A. Yes, sir.

Q. Which of your lavatories have the largest sale?

A. A-608.

Q. Is that a pedestal lavatory?

A. No, sir; that is a half-circle flat back lavatory without apron, 18 by 21 inches slab, 8 inch back.

Q. Are those calculations for that lavatory shown on this Exhibit No. 256? 4

A. Yes, sir; on page 12 of the exhibit.

Q. You have made up estimates for these five year guaranteed baths, pedestal lavatories, square flat back lavatories, half-circle apron lavatories, half-circle flat back lavatories, other kinds of lavatories, drinking fountains, roll rim sinks in one piece, and so forth; do all these percentages show increases? A. Yes, sir.

Q. You would have obtained if you had sold your goods according to the Resale Price List? A. Yes, sir.

1 Q. Now, these increases to which you have testified on the various articles range between what limit, that is, give the lowest and the highest?

A. About 1-1/2 or 1-8/10 to approximately 34 per cent.; they range all the way between there in the various zones on the various articles.

Q. Look at the percentages on page 17 of this Exhibit No. 256 and state what is the highest percentage given there? A. 45-1/10 per cent.

Q. Then the per cent. on that page, "Corner Non-Apron Lavatory 16-½" on Side. 6" Back. Kohler's 'Kennedy' 2 Plate A-732 Standard's 'Yale' Plate P-559. Jobber's Cost. Resale Plan. Schedule 4. Page 28 (B)", range from what?

A. From 23 to 45-1/10 per cent.

Q. 23 per cent. in Zone 1 to 45 per cent. in Zone 5?

A. Yes, sir.

Q. Is that a lavatory which is very largely sold that is, Plate A-732?

A. Yes, sir; it is not the most staple lavatory.

Q. But it is largely sold? A. Yes, sir.

Q. Look at sheet 23 for "Roll Rim Sink Combination With Two 18" Long Enameled Drain Boards, Kohler's 3 Plate A-1076, Standard's Plate P-1233", such as appear in the Resale Plan on what page?

A. Page 27, Schedule 4½, Item E.

Q. The percentage of increases on that article ranges between what— A. 26.4 and 38.4 per cent.

Q. Is that article Plate A-1076 sold very largely?

A. No, sir.

Q. Look at page 36 of this Exhibit No. 256, being the percentages for "Roll Rim High Closet Tank 20 x 10 x 10" Size Kohler's Plate A-1337 Standard's Plate P-946", and state between what figures the percentages range on that 4 sheet? A. From 23.3 and 39.1 per cent.

Q. From these last sheets you could state the percentages range between what figures?

A. They range all the way from 1½ per cent. to 45 per cent. on the entire line.

Mr. GROSVENOR: I think that is all.

CROSS EXAMINATION BY Mr. NOBLE:

Q. Mr. Kroos, what is your business?

A. Secretary of the J. M. Kohler Sons Company. 1

Q. And what are your duties as such?

A. Well, office work mostly.

Q. I mean with especial reference to the cost system of J. M. Kohler Sons Company.

The WITNESS: The cost system?

Mr. NOBLE: Yes, or whatever you do.

A. I am connected with the Sales Department mostly; my main duties are in connection with sales, shipments, orders and quotations.

Q. Is it not part of your duty to work out the cost 2 of manufacture in J. M. Kohler Sons Company?

The WITNESS: The manufacturing costs, you mean?

Mr. NOBLE: Yes.

A. Not particularly.

Q. What do you do, check them?

Mr. GROSVENOR: His examination did not go into the cost of manufacture.

Mr. NOBLE: I am merely trying to find out what the experience of the witness is. Will you read the question? 3

The stenographer then read the question.

A. No, sir.

Q. Are you familiar with the cost of manufacture?

A. I am familiar with our cost.

Q. You are familiar with your costs?

A. Yes, sir; but I am not fully acquainted with the details.

Q. Are you familiar with the cost of manufacture of any other manufacturing factory where sanitary enameled iron ware is made? A. No, sir. 4

Q. Then you don't know what profit, if any, other manufacturers make on the sale of their goods? A. No, sir.

Q. As I understand you, you said your duties at Kohler & Sons in respect to the question of cost, consists in taking figures furnished to you and working out quotations and invoices and things of that character? A. Yes, sir.

Q. Now, in this Exhibit, known as Petitioner's Exhibit No. 256, which consists of an index and thirty-seven pages, there are in the left hand column various statements, such

1 as "Jobber's Cost. Resale Plan. Schedule 1. Page 32" and "Resale List—Resale Carload Discount" and "7-½% Jobber's Discount on Invoice"; the words that appear in that column on all the other pages? A. Yes, sir.

Mr. GROSVENOR: That is excepting insofar as the references to the schedules and pages of the Resale Price Book is concerned.

Mr. NOBLE: Yes, sir.

The WITNESS: Yes, sir; they are all drawn up in the same manner— on the same basis.

2 Q. What do the words "Resale List" mean?

A. That is the list price for the article enumerated on that sheet as shown in the Resale Price Book.

Q. Of what date?

The WITNESS: Do you mean the date of the sheet?

Mr. NOBLE: The date of the Resale Price Book.

A. June 25th—I think that is the date those sheets bear.

Q. When you refer to the "Resale Price Book", you mean Petitioner's Exhibit No. 41, don't you?

3 A. If that is the number of the exhibit.

Q. Just look and see if that is it?

A. Yes, sir; that is the book.

Q. What does "Resale Carload Discount" mean?

A. That is the discount shown in that book for that article.

Q. For carload lots?

A. Yes, sir; it is the carload discount.

Q. Are all these sheets where you used the words "Resale Carload Discount" based upon the carload discount price? A. Yes, sir.

4 Q. Is your calculation based upon that price?

A. Yes, sir; on carload shipments.

Q. Did you treat this resale carload discount price as including freight?

The WITNESS: I don't quite understand your question.

Mr. NOBLE: Did you treat this resale carload discount price as including freight?

The WITNESS: I don't quite understand your question. 1

Q. You have an item here "Resale List, General Zone, Pittsburgh, 83.75"?

A. Yes, sir.

Q. In the next line you say "Resale Carload Discount, 45%, $37.69"?

A. Yes, sir.

Q. And on that you make a calculation—

A. Yes, sir.

Q. And in making that calculation did you treat the resale list price as including the freight? 2

A. The freight is deducted there on that sheet.

Q. Did you treat the figures $83.75 as including the freight?

A. I don't understand your question; it is a question never put to me before in that way.

Q. I am not trying to tangle you, and it may be that my language is not the language of experts on books, but I want to get at it so that I can understand it and so the Court can understand it. You have "Resale List, General Zone, Pittsburgh, $83.75"? 3

A. Yes, sir.

Q. I understand what you meant to say by that was that the licensed manufacturers have as a list price to jobbers in the General Zone, in Pittsburgh, for tubs similar to the Standard's "'Albion', Plate P-205", the list price of $83.75?

A. Yes, sir; that is the list price at which the manufacturer invoices that bathtub.

Q. Does that $83.75 include freight?

A. The manufacturer allows the full freight.

Q. You did not answer my question. Does it include freight? 4

A. I answered it as I understand it.

Q. Does the figure $83.75 as you have made your calculations here, include a charge for freight?

A. The freight is allowed by the manufacturer; it is full freight allowed to the General Zone.

Q. Let us see if I can get that right: For figuring from the figure $83.75, the list price, did you treat those figures as though they included an item for freight?

A. I would like to answer your question, Mr. Noble, but

1 I don't understand it and don't know exactly what information you are seeking.

Q. I am merely trying to find the basis of your calculations?

A. The freight item is taken care of a little further down in the calculation.

Q. Does $83.75 include any figure, or is there any amount included in that figure for the purpose of covering a charge for freight. Do you understand that?

A. Yes, sir; I understand your question now.

Q. You have stated the figure $83.75 as including an al-
2 lowance for a sum of money for freight?

A. Yes, sir.

Q. Do you know what figure is included there for freight?

The WITNESS: That depends upon where the goods are shipped.

Mr. NOBLE: I am talking about General Zone, Pittsburgh?

A. As far as my calculations are concerned, it is freight from Sheboygan to Pittsburgh.

Q. But in this Exhibit No. 256, you compared, you said,
3 on page 1 and on the other pages, the Kohler goods with the Standard Company's goods. Now I ask you do you know what figure is included, or what sum is included in the figures $83.75 for General Zone, Pittsburgh, for freight upon the Standard's "Albion" bathtub?

A. No, sir; that reference to the Standard's "Albion", was put in there to show the competitive figure with the Licensed Manufacturers' article calculated in the basis upon which we made out that sheet.

Q. Well, what allowance did you include in these figures, $83.75 for freight for Kohler goods?

4 A. $1.38, which is shown on the fourth column down from the top.

Q. That is the freight from Sheboygan to Pittsburgh, is it? A. Yes, sir.

Q. Upon a tub weighing how much?

A. Upon a tub weighing 575 pounds.

Q. The figure being at the rate of 24 cents per hundred weight?

A. Per hundred weight, yes.

Q. Then you do not pretend to say at all, on any of these

sheets, if I understand your last answer, anything about the cost of goods manufactured by the licensed manufacturers? 1

A. We do not; neither do we pretend to say anything about the cost of the goods manufactured by the Kohler Company, as far as the cost of the goods is concerned.

Q. You have used the phrase "Cost to Jobber"; I am not talking about the manufacturer's cost, but in the same terms as you have used it on these sheets, and I ask you again whether in the figures which you have stated here on the various pages of this exhibit you have meant the Court to understand, when it comes to examine it, that any of these figures applied to the goods of the licensed manufacturers? 2

Q. You have not meant that?

A. No, sir.

Q. You have not meant that ?

A. No, sir; that sheet is calculated on Kohler goods, that is the price Kohler obtains on Kohler goods if he had would have gone into this arrangement, as well as the price we were obtaining at that time and the percentage of of advance, and it applies only to Kohler goods.

Q. And what the Kohler Company would receive for its goods?

A. Yes, sir. 3

Q. And you do not pretend to show, if I understand you, by your calculations here that the goods of the licensed manufacturers would cost the jobbers in any of the zones which you have covered, the prices which you have here arrived at?

A. No, sir; those are the prices on Kohler goods.

Q. I come next to the item which you call "Crating"; what does that cover?

A. It covers the charge made by the manufacturer for crating the bathtub.

Q. These Kohler "Czarina" tub and the Standard "Albion" tub are what are known as high grade tubs? 4

A. Yes, sir.

Q. They are the best manufactured by those companies respectively, or among the best, anyhow?

A. They are among the best; yes, sir.

Q. And are guaranteed for five years durability?

A. Yes, sir; they are five year guaranteed baths.

Q. You do not want to commit yourself on that guarantee part, but they are known as five year guarantee baths?

A. Yes, sir; they are known in the trade as five year guaranteed baths.

Q. Is it the custom of the Standard Company to ship their high grade tubs in crates or in boxes?

A. That I don't know.

Q. Do you know as to any of the manufacturers except the Kohler Company?

A. No, sir.

Q. What is your information on the question?

A. As we understand, they crate them unless they are finished on the exterior, and then they box them, and so do we.

Q. You mean finished by painting?

A. Yes, sir; exterior zink paint is applied.

Q. All high grade bathtubs are so finished, are they not?

A. Not at the factory; there are some that are ordered in that manner, but there are a great many of them shipped with just an ordinary coat of paint, and when they are shipped in that way they are crated.

Q. Is it not true that the Standard Company and many of the manufacturers ship their tubs boxed, whether they are painted or not, because it is such a high grade fixture?

A. Not as far as we know.

Q. Can you state what per cent. of the Kohler's "Czarinas" are shipped by you finished by you on the outside as you have stated?

A. No, sir; I could not.

Q. Could you state that without being exact, just generally?

A. No, sir; I think there are as many of them shipped with just an ordinary coat of paint as there are with the finish, because in a great many cases the owner wants to have the tub finished himself in line with the other decorations in his bathroom.

Q. In other words, you would say that it was about half and half?

A. I would not say that; I don't want to commit myself, because I do not know what the percentage is.

Q. What is your judgment of the number of high grade finished bathtubs which you ship out?

A. Well, that is pretty hard to answer; I do not like to answer that question because I am not positive about it.

Q. Would it be as much as 40 per cent., approximately?

A. It would be pretty hard to answer that, approximately, even, because I have not the percentage of decorated baths which we ship in mind as compared with the other ordinary baths. 1

Q. But those which are finished, you box?

A. Yes, sir.

Q. Now, in your sheet here you haven't taken the case of those tubs which you box, have you?

A. No, sir.

Q. What is your charge for boxing?

A. Two dollars.

Q. You have examined Petitioner's Exhibit No. 41, and I ask you if that figure of two dollars is not the same as the charge for boxing by the Standard Company of their "Albion" tub? 2

A. I cannot answer that without referring to the Resale Book.

Q. Well, the figure of two dollars for boxing is one that is well known in the trade, is it not?

A. Yes, sir.

Q. So if you have in your calculations here shown the instances where you boxed these high grade fixtures, your results would naturally have been different? 3

A. If they had been boxed, they would have been decorated on the exterior and there would have been an additional charge for the decorating.

Q. So that your results would have been different?

A. The results would have been different, I suppose; I do not know, because I have not figured it out.

Examination Suspended.

Adjourned until the following morning, Wednesday, December 14, 1910, at 10.30 o'clock. 4

1 Post Office Building,
Chicago, Ill., December 14, 1910.

Pursuant to adjournment the taking of evidence for the Petitioner was resumed in the Post Office Building, in Chicago, Illinois, on the fourteenth day of December, 1910, at 10.30 o'clock A. M.

OSCAR A. KROOS, resumed the stand for continuation of cross examination and testified as follows:

CROSS EXAMINATION BY Mr. NOBLE (continued):

2 Q. When we suspended yesterday, Mr. Kroos, I was askink you whether in the calculation you show on page numbered one of Exhibit No. 256, as to the General Zones, you would not have had to add two dollars instead of sixty cents had you shipped the Kohler's "Czarina" tub in what you have described in trade parlance as finished, for boxing?

A. Yes, sir.

Q. Then, if you had added that two dollars for boxing, your percentages for discount would have shown, of course, have shown different results?

The WITNESS: Well, if we had added—
3 Mr. NOBLE: I mean in this calculation?
The WITNESS: The resale calculation?
Mr. NOBLE: Yes.

A. Yes, the percentages of advance would have been higher, then.

Q. The percentages of advance would have been higher?

A. Yes, sir.

Q. But the dollars and cents of discount would have been greater also, would they not?

A. I don't understand that question.

4 Q. For example, if you had added to the figures $42.61 in the first column two dollars instead of 60 cents, and then had taken off from that your 7½ per cent. jobber's discount, you would have had a larger figure than $3.45 discount?

A. Yes, sir.

Q. And likewise your discount under the head of rebate, 5 per cent. for confining purchases and 5 per cent. for tonnage would have shown different figures from $2.09 and $1.99?

A. There would have been a slight difference, but only very slight; it would have made no material difference. 1

Mr. NOBLE: I move that that portion of the answer as to the materiality of the difference be stricken out and later when we come to dollars and cents the witness can state what the difference was and allow the Court to judge whether it was material or not.

Q. Now, on the next line "Freight Allowance", that means what?

A. The amount of freight we would have allowed on that shipment. 2

Q. Based on how many pounds?

A. Based on 575 pounds.

Q. That is the weight of the Kohler's "C'zarina" tub?

A. Approximately, yes, the shipping weight.

Q. Is that the weight of the Standard's "Albion" tub?

A. As far as we know, according to the price book.

Q. If you were told that the weight of the "Albion" tub was 640 pounds and not 575, and you were making your calculation on that basis, your freight allowance would not have been $1.38, but it would have been a larger amount, would it not? 3

A. Yes, the sheets, however—

Q. I will ask the question; don't volunteer anything. The freight allowance means, you say, the amount of freight which you allow on the shipment; translate that into ordinary language?

Mr. GROSVENOR: He did not say that: It is the freight allowance allowed by the contract. In other words, the bathtub is put f.o.b. on the train and then the jobber or the receiver of that bathtub pays the freight, and then when the manufacturer makes out the bill he allows for the freight from the shipper. 4 That is from the point of shipment to destination.

Mr. NOBLE: That is all I wanted. I wanted to get the testimony which counsel has just given on the record. I understand that, but I wanted to get it on the record.

Q. The words "Freight Allowance" mean that upon the bill which is sent the jobber he is credited with what you call "freight allowance"; is that correct?

A. Yes, sir.

Q. So that the jobber himself pays the freight; is that correct?

A. The manufacturer allows it and the manufacturer pays it when the shipment arrives.

Q. It does not come out of the manufacturer's pocket?

A. Yes, it does, practically; the manufacturer allows it to the jobber.

Q. What do you mean by saying that he allows it to the jobbers? Do you mean that he deducts that from the price of the tub?

A. He deducts it from the price of the tub; yes, sir.

Q. Is it not true that every jobbing point in the General Zone is a free delivery point?

A. Full freight allowance to all these points; yes, sir.

Q. Full freight is allowed?

A. Yes, sir.

Q. That comes out of whose pocket?

A. It comes out, practically, of the manufacturer's pocket, because he allows the freight on the invoice.

Q. Then the jobber does not pay the freight, but the manufacturer pays the freight?

A. The jobber pays the freight when the shipment arrives at its destination.

Q. Then the destination is not a free delivery point?

A. The manufacturer who ships the goods to a delivery point in the General Zone, he has to allow the freight on that shipment if it amounts to 200 pounds or over.

Q. Who actually pays that freight?

A. I believe I have stated that.

Q. Who actually pays the freight?

A. Why, the manufacturer pays the freight, the shipper.

Q. What did you mean to say a moment ago, when you said that the jobber pays it on its arrival?

A. The transportation company sends him a bill for the freight on the shipment and he pays the company, but the manufacturer allows that freight on the invoice.

Q. In the price which you first charged on your resale list, $83.75, you have included that freight charge as part of your price?

A. It was deducted—

Q. You do not understand me: In the resale list which you have here as $83.75, you have included the amount of

money which it cost to ship the bathtubs to one of the free 1
delivery points in the General Zone, have you not?

A. I told you when you asked that question first I did not fully understand your question. As I interpret it, it was just simply a case of whether the net freight charges were embodied in that price or whether they were not. They were embodied for the reason that we allowed it later on; if they were not embodied, then the freight allowance would not have been shown a little later on down on that sheet.

Q. Well, I want to get the meaning of this matter straight, as you have put it on this sheet of paper?

A. Yes, sir. 2

Q. And I ask you again, does the resale list price of $83.75 upon the "Czarina" bathtub, to the General Zone, include a charge for the freight?

A. As I understand your question, it does.

Q. Please answer yes or no, whether it does or not, as used by you?

A. I have not the same understanding of the question as you have. Such a question has never been put to me before.

Q. You made these calculations or checked the calculations in this Exhibit No. 256, did you not?

A. Yes, sir. 3

Q. And this figure of $83.75 is part of the calculation which you have made?

A. Yes, sir.

Q. Tell me the items which go to make up that figure of $83.75 in the calculations made by you?

A. The list price which is shown in the Resale Price Book on the fivt foot tub like our "Czarina" baths, without the crate, and there is nothing stated in the Resale Price Book on that sheet with regard to the freight allowance.

Q. But in the calculation which you have made here, the result is what you call a net cost to the jobber in that column 4
under that resale plan, figures being $37.75, I want to know whether when you start off with the figure $83.75 you have treated it as including a charge for the freight?

A. We have allowed the freight a little ways down, you know, Mr. Noble; I have answered that question three or four times.

Q. You have not answered this question and I want to know what you have included in the figure of $83.75. What is included in that figure?

1 Mr. GROSVENOR: It is stated there "Resale Price List"; the witness has testified as to the resale price list.

Mr. NOBLE: The witness has testified as to these figures. I want to get from the witness what element has treated as being included in the figure $83.75, in order that I may determine whether his results of $83.75 as the net cost to the jobber is correctly calculated. I will ask the stenographer to read the witness my last question. I think the witness will understand it now.

2 The stenographer then read the question.

A. The statement there "net cost to jobber", you possibly do not interpret that in the same way as we do. As we testified, this sheet shows the net price we would have obtained, and by net cost to jobbers that figure $37.75 is the net price which we would have obtained from a jobber on that bathtub if we had gone into the combination and sold accordingly to the resale price. We do not attempt to show by that sheet how much of an advance the jobber would have had to pay us if we had gone in there, but we attempt to show how much of an advance we would have gotten and,
3 you are trying to arrive at what advance the jobbers pay. Those sheets are not calculated on that basis.

Q. As I understand you now, you do not attempt to show by any of these calculations what the jobber would have had to pay you more or less than he had paid you at that time, but only that the net price which you would have received had you taken the license and as you interpret the license would have been the figures which you show there?

A. Yes, sir; that is the idea exactly.

Q. This does not show that the jobber would have had to pay any more?

4 A. No, sir; we don't attempt to show that, and I have not testified to that effect.

Q. Now, you have made a calculation here where you say that according to the Resale Plan, had you accepted it, you would have received from a jobber for the "Czarina" tubs in the General Zone, $37.75?

A. Yes, sir.

Q. That calculation is obtained in that first column?

A. Yes, sir.

Q. Your calculation on this Resale Plan on all these sheets is made in the same way? 1

A. Exactly on the same basis.

Q. So what you say as to this column and as to the calculations and results applies to all the illustrations which you have given of the result of the Resale Plan, does it not?

A. Yes, sir; on all these sheets which have been worked out.

Q. Now, in this calculation which you say you have made to show what the Kohler Company would have gotten out of a "Czarina" tub shipped to Pittsburgh, you have started off with what you call the Resale List of $83.75 and you afterward deduct a certain amont for freight. Please tell me whether in the figures $83.75 there is any charge or amount of money included in that for the freight? 2

A. We had to deduct the freight in order to get at the net price we obtained for the tub, and that is all we are trying to show.

Q. All right. Is there any freight included in that charge of $83.75?

A. Your question is not at all clear to me. I do not know at what you are trying to arrive. The question has never been put to any one as to whether the price included freight. 3

Q. Then you do not know whether the figures $83.75 include any charge under this Resale Plan for freight? Answer yes or no?

A. I don't understand the question. I will not answer it yes or no unless I understand the question.

Q. Did you treat this figure $83.75 as though it included such a charge?

A. That $83.75 was taken from the Resale Price Book, Schedule 1, Page 32, and according to that price sheet it includes nothing but the bare tub without any fittings or anything else. 4

Q. Then, you have treated this as though it did not include any charge for freight?

A. I have treated it exactly as covering the items specified on that price list.

Q. Do you understand that they include anything for freight?

A. It is not so stated on the sheet.

Q. Do you understand that they include any item for freight?

1 A. I don't understand that.

Q. So, in making the calculation you have not treated the figure $83.75 as though it included anything for freight—if you understand, as you just testified—that according to the price list no item of freight is included?

A. The price list does not say anything about the freight, that is the price list on that specific article; that is, the sheet that was taken from.

Mr. NOBLE: My question is a perfectly simple one, it is perfectly clear what I mean.

The WITNESS: It is not to my mind.

2 Mr. NOBLE: I only want to get the facts on which you base your calculation.

The WITNESS: I have stated what that list price includes.

Q. Do you mean to say that $83.75 does not include any charge for freight, as you understand it?

A. As I stated, that list price was taken from Page 32 of Schedule I, of the Price Book, and there is not freight included on that list.

Q. Then you did not treat the $83.75 as including freight?

3 A. We took care of the freight later on.

Q. Then, as you understand the figure $83.75, do they or not include any charge for freight?

A. I answered that.

Q. Answer it again. What is your understanding?

A. Our understanding is that it includes what is stated on that price sheet.

Q. And freight is not included on that?

A. It is not on that price sheet.

Q. Then do you understand that you did not include the freight in that figure $83.75?

4 A. It includes what is stated on that price sheet.

Q. Then, please enumerate those items?

A. (Reading): "Five year guaranteed baths, 4½ and 5 inch roll rim with base. List price, five foot tub, $83.75."

Q. Now, having read those items, again I ask you whether in the calculations made by you, you have understood or treated the figures $83.75 as including any item for freight?

A. I cannot answer you in any different way from what I have.

Mr. NOBLE: Read him the question, please. 1

The stenographer then read the question.

Mr. NOBLE: Will you please answer that?

The WITNESS: I gave you the answer. I told you I could not answer that in any other way than I did before.

Q. If the figure $83.75 do include an item for freight, then would it not follow that these calculations, based upon that figure, arrive at an incorrect result, if you have treated them in the manner which you have said?

A. If we have treated the list $83.75, as including the articles specified on the sheet— 2

Mr. NOBLE: Only.

A. (Continuing): Only, we certainly would have to allow the freight because according to the resale price full freight is allowed.

Q. Then, the result $37.75 would be modified?

A. No, sir.

Q. According to the Resale Price Book, as you understand it and as you have applied it to your calculations here in Exhibit No. 256, have you understood that the discounts are taken off from the gross or how? 3.

A. We interpreted it in this manner—

Q. (Interrupting): When you say "we" whom do you mean, yourself?

A. Yes, sir; the Kohler Company.

Mr. NOBLE: Well, you are testifying and I want your testimony.

A. (Continuing): The resale carload discount and the 5 or 7¾ per cent., according to the article, as per clause 1 of the License Agreement, which is allowed by the manufacturers on the invoices, is deducted from the carload lots, resale list, and then the crating charge is added for such goods as the crating charge applies to, and then the freight allowance is deducted and then two 5 per cent. rebates, one for confining purchases to the licensed manufacturers and complying with the conditions of the license agreement and the other for tonnage; the tonnage we figure for the maximum allowance of 5 per cent., based on $30,000. 4

Q. If the correct interpretation of the Resale Price were that the $83.75 included an item for freight, and from that

1 the discount of 45 per cent. was taken off for carload discount, and to that result were added the charge for boxing or the charge for crating, as the case might be, and the jobber's discount of 7½ per cent. on invoice were taken off from that, you would reach a different result from that reached in your calculations, would you not?

The WITNESS: I cannot say without cauculating it.
Mr. NOBLE: Then, calculate it.
The witness did as requested.

A. Five cents difference on the tub.

2 Q. So that the calculation as shown here is incorrect on that basis, starting on that basis?

A. There is a slight difference of five cents per tub interpreting the resale price in that manner.

Q. If, instead of sixty cents being charged for crating you charged for boxing, the difference would be still greater, would it not? A. On that particular calculation, but—

Q. That is all I am talking about, that particular calculation; wouldn't it be different?

A. Certainly; there would be $1.40 difference, at least.

Q. Passing to your next item "Freight Allowance", I

3 ask you whether or not Pittsburgh and Buffalo are not both free delivery points? A. Yes, sir.

Q. And don't you sell at the same price to jobbers at both places?

A. That pertains to our business, of course, does it not?

Mr. GROSVENOR: You are referring to his calculations according to the Resale Plan?

Mr. NOBLE: Of course, I don't want to enter into his private business.

Q. According to your interpretation of the Resale Plan,

4 would you sell to jobbers in those two free delivery points at the same price?

A. Zone 1 prices apply on shipments to points in the General Zone—

Q. Why do you arrive at the result of $37.75 at one place and $37.91 at another place?

A. That means what we would obtain from the jobber; the freight rate from Sheboygan to Buffalo is less than it is from Sheboygan to Pittsburgh; in other words, we would obtain more for the tub.

Mr. GROSVENOR: That is if you shipped according to the Resale Plan? 1

The WITNESS: Yes, sir.

Q. Then, the words "Net Cost to Jobber", are misleading? They mean the net price received by Kohler & Company?

A. The net prices that would have been received by us under that Resale Plan.

Q. Is it not a fact generally that bathtubs are sold at all the free delivery points by manufacturers, not by you alone, at the same prices to jobbers?

A. I don't understand that. 2

Q. Is it not true that class for class of tubs that the manufacturers sell at free delivery points to jobbers at the same price, that is, all sell in Pittsburgh at the same price and all in Buffalo or Washington and so on?

A. Well, the manufacturers, as we interpret the Resales Plan and License Agreement, the licensed manufacturers all sell at the same price.

Q. Now going down to the second sub-division of page one headed "Kohler's Price, June 1, 1910". The list is put at $58.50? A. Yes, sir.

Q. Have you treated that as including any item for freight? 3

A. We show the freight allowance there, right underneath it.

Q. Have you treated the figure $58.50 as including any item for freight? Answer yes or no.

A. I cannot answer it, because as I stated, I do not understand it. Such a question has never been put to me whether or not this includes freight.

Q. And you don't know whether the Kohler list includes freight?

A. Our list does not specify whether it includes freight. 4

Q. And you don't know whether it does or not?

A. We allow the freight to the jobber, of course.

Q. Do the figures $58.50 include any charge for freight?

A. The "Czarina" bathtub is charged for $58.80 without any fittings or anything else.

Q. And as you understand it, the figures $58.50 do not include any items for freight?

1 A. I would like to answer you but I don't know how to answer that question, as I do not understand it.

Q. These calculations here do not pretend to show what the jobber could in any way sell the goods for?

A. No, sir.

Q. There is no intention here to show that there would be any raise in price by the plumber to the public according to these calculations? A. No, sir.

Q. What you have said applies to all the sheets of Exhibit No. 256?

A. Yes, sir; they are all worked out on the same basis.

2 Q. Now, will you turn to your calculation, say Zone #5, to Texas Common Points; what is the list according to your interpretation of the Resale Plan at those points?

The WITNESS: The list?

Mr. NOBLE: Yes.

A. $83.75.

Q. What is the Resale carload discount as you understand it, at those points? A. 36 per cent.

Q. That would leave your first result at $53.60, would it not? A. $53.60; yes, sir.

3 Q. Do the figures $53.60, as you understand it, according to the Resale Plan, include any charge or item for freight?

A. I am under the impression that I had made that perfectly clear to you.

Q. That you do not so treat it?

A. No, sir; I did not say that.

Q. I ask you that.

A. I said that I was under the impression that that point had been made perfectly clear to you, as we show the freight allowance right down in the fourth column there.

4 Q. Let me ask you a general question to see if we can get nearer to an understanding: Is it not so that if a manufacturer took his manufacturing costs and added to them a percentage of what are commonly called overhead charges, those overhead charges including administration and selling and then adding a percentage for profit only, in making up his list price, and then allow full freight, if it would not wipe out his profit, if any, if he shipped a long distance?

The WITNESS: Will you read the question to me?

The stenographer then read the question. 1

Mr. GROSVENOR: I object to that inasmuch as it inquires about manufacturing costs and these sheets do not deal with that at all, but only are calculated to show what the Kohler Company would have received under that Resale Plan. I object to it also on the ground that it is irrelevant.

Mr. NOBIE: There is no attempt to find out what the manufacturing costs are, or what the profits are, but the object is to ascertain whether or not the figures $53.60, used by the witness in his calculation, were not treated by him as including freight. 2

The WITNESS: I have answered that question about six times, and I cannot answer it in any other way.

Mr. NOBLE: Will you read the question again?

The stenographer then read the question.

A. I cannot answer that question because I am not familiar with what other manufacturers are doing or making up their lists.

Q. Then, in making up your calculations here and applied to the Kohler's goods, would it not result in the Kohler Company receiving very much less profit on its goods if they shipped to San Francisco, in Zone #10 than if they 3 shipped to the General Zone, if the freight had not been included in the list price?

A. It is a slight difference in the net amount which we obtain.

Q. On this calculation would there not be a very great difference in the freight in those two cases?

A. About 13 cents per hundred weight.

Q. One being 24 cents and the other being $1.50 per hundred weight? A. No, sir.

Q. According to your calculation here it is?

A. No, sir; 37½. 4

Q. No, it says $1.50?

A. That is under the Resale Plan.

Mr. NOBLE: That is what I am speaking of. Mr. Stenographer, will you read the question? Apply them to the calculation of what the Kohler Company would have received if they had adopted the Resale Price Agreement, and say if there would not have been a great difference?

1 The stenographer then read the question referred to.

The WITNESS: There would be a difference there on account of the difference in the freight rate, but that is taken care of in the discount under the Resale Plan to more than offset the difference in freight.

Q. Explain how that difference is taken care of in the discount?

A. The carload discount on that bathtub, according to to the Resale Plan is 45 cents, and according to Zone 10 it is 34 cents.

2 Q. That takes care of the difference in rates, doesn't it?

A. It does more than that, I believe.

Q. But it does take care of the difference in freight?

A. Of course, we were not interested in the Resale Plan and we can testify what this difference should take care of.

Q. But if this difference does not take care of the difference in freights then the profit that would be received by the manufacturers under the Resale Plan would greatly differ between the various zones, would it not?

A. As I said, we were not interested in the compilation of that price list and I cannot say how they looked on

3 these discounts.

Q. Then you dealt with discounts and figures about which you did not know the meaning?

Q. We dealt with figures and discounts taken from the Jobber's License Agreement.

Q. But you are not abie to say what those figures mean, are you?

A. We were not interested in the compilation of them.

Q. But you do not know what they mean?

A. We know what they mean according to out interpretation of them.

4 Q. But you don't know according to your interpretation whether you have included an allowance for freight in the list price or not?

A. These sheets show very plainly what the list price included.

Q. Which sheets? A. In the price book.

Q. That is in Petitioner's Exhibit No. 41?

A. And our calculations were based on that.

Q. And your interpretation did not include an item for freight in the list price? A. I did not say that. 1

Q. Then, did your interpretation of the Resale Price Book which is Petitioner's Exhibit No. 41, include an item for freight in the figures $83.75, that being the list price? I am now asking for your interpretation.

A. I have answered that question about six times and I refuse to answer it. I tried to explain that such a question has never been put to me, whether a catalogue list price includes a freight allowance.

Q. I call your attention to page 32, which you say is the page in Petitioner's Exhibit No. 41, if I understand you— A. (Interrupting): Yes, sir. 2

Q. And I ask you to look at that page and tell me from that page any items that are included in the list price which appear there on that page?

A. (Reading): "Five year guaranteed baths, 4¾ and 5 inch roll rim with base similar to Day-Ward 'Rico'; Iron City 'Modello'; Kohler's 'Czarina'; Standard 'Albion'; United States 'Colona'; Wolff 'Neptuna'", and the illustration of the bath on the side shows what it includes.

Q. Is not that just a description of the articles on which the prices are given? 3

A. It is a description of the articles which are included in the list price.

Q. Is there any description on that page which shows what items are included in the list price of $83.75, that is, items of price? A. I just enumerated that.

Q. Are there any items of price which are shown?

A. I do not understand your question.

Q. Then, do you understand that the discount, as you have used them in this calculations and applied to the Resale Plan, takes care of the freight allowance or of the charge for freight? A. Yes, sir. 4

Q. You do so understand?

A. Yes, sir; but not the catalogue list.

Q. Then, let's go back to Zone #5. As I understand you, what you have thus far said as to Zone #5 is that the list price for all Texas Common Points is $83.55; that there is a resale carload discount of 36 per cent., amounting to $30.15, which leaves $53.60 as the net price so far?

A. Yes, sir.

Q. Will you please turn to the appropriate page in

1 Petitioner's Exhibit No. 41 and add to that $53.60 the list charge for boxing? A. That makes it $55.95.

Q. Will you please deduct from that the 7½ per cent. jobber's discount on invoice? A. $51.75.

Q. What is the discount? $4.20, is it not?

A. Yes, sir; $4.20.

Q. And then the net result would be how much so far? A. $51.75.

Q. Now, will you next deduct the 5 per cent. for confining purchases; how much is that? A. $2.58.

Q. And your result would be? A. $49.17.

2 Q. Now, will you next deduct the 5 per cent. discount for tonnage, based on purchases of $30,000; how much is that discount? A. $2.45.

Q. What would your result be? A. $46.72.

Q. You next take off from that result of $46.72, the freight allowance at $1.22 per hundred weight, on the Standard's "Albion" tub which I will ask you to assume weighs 640 pounds? A. $7.80.

Q. That is the freight? A. Yes.

Mr. GROSVENOR: I object to this change of tubs and to the change of weights. It has nothing to do
3 with the prices on the Standard's "Albion" tub, but it is simply a calculation of what the Kohler people would receive on their own tub if they calculated the price according to the Resale Plan, and to change the tubs here, of course, changes the calculation to the tub of another manufacturer. As has been repeatedly testified, we are not going into the cost of the Standard's "Albion" tub, but simply of the Kohler's "Czarina" tub, and the percentages calculated at the bottom have simply to do with the Kohler's "Czarina" tub.

4 Mr. NOBLE: The question was asked the witness because on the top of page 1 and the other pages, the witness has taken as example various articles, a Standard article and a Kohler article, and I merely wanted to show how they would come out.

Mr. GROSVENOR: Do I understand that the weight of the "Albion" tub differs from the "Czarine"?

The WITNESS: The weight of the "Czarina" is 575 and the "Albion", according to the Resale Price Book

is 640 pounds. We computed those tables on our tubs and used those weights. 1

By Mr. Noble:

Q. Your calculation of weights on your tub is crated weight, and the "Albion" is boxed, is it not?

A. I don't know.

Q. What is the weight of your "Czarina" tub boxed?

A. I don't know.

Q. The result you arrived at after taking off the freight there was what? A. $38.92.

Q. Now, this $38.92 which you arrive at as a result of that calculation is the amount which the manufacturer receives? A. Yes, sir. 2

Q. Start back from the beginning of that calculation, now, as to Zone #5, and show me what that tub would cost the jobber delivered at his house according to the Resale Plan?

A. We do not attempt to show what the tub will cost the jobber or what any of those articles would cost the jobber. We only attempt to show the prices he would have obtained under that Resale Plan if we had gone into that arrangement, the prices we were obtaining then and the percentage of advance. 3

Mr. Noble: Mr. Stenographer, will you read my question again?

The stenographer then read the question.

A. I refuse to answer that question because we do not attempt to show the advance that a jobber would have to pay or the jobber's price or anything like that. We only attempt to show the price we would have obtained.

Q. In other words, you are unwilling to have your calculation tested?

4

Mr. Grosvenor: No, I object to that on the ground that you are asking him to make a different calculation.

Q. You are unwilling to have your calculation tested?

A. No, sir.

Q. I ask you to make this calculation because it will show the percentages of advances which you have shown here are totally incorrect—

1 A. (Interrupting): We can prove those percentages there.

Q. (Continuing): —that they are totally incorrect as applied to licensed ware, applying to that the method of calculation shown by Exhibit No. 41, which you have used and from which you have testified to these various percentages of increase. Now, answer that question?

The WITNESS: Will you read it?

The stenographers then read the questions.

Mr. NOBLE: Will you make that calculation?

2 A. The calculation which you asked us to make today is an entirely different proposition. All we attempted to show by those sheets is the net amount which we would have obtained under the Resale Plan if we had gone into the combination. We also show the price we obtained at the time and the percentage of advances which we would have obtained, if we had gone into the combination.

Q. I asked you to make the calculation for the purpose of showing that the Standard's "Albion" tub does not cost the jobber any more now than it cost him before the Standard Company accepted this License Agreement?

3 Mr. GROSVENOR: Let me make the objection here to the question of counsel for the Defendant on the ground that it has to do with the cost, as stated by him, of the Standard's "Albion" tub to the jobber, and I have not introduced these tables for the purpose of showing the cost of the "Albion" tub and none of the testimony relates thereto. Counsel for Defendants may call witnesses for the Defendants for that purpose. The whole purpose of these tables is to show the price that the Kohler Company would receive for the "Czarina" tub according to the Resale
4 Plan.

Mr. NOBLE: As interpreted by the witness?

Mr. GROSVENOR: Yes. If counsel wishes calculations in respect to the Standard's "Albion" tub, he can call his own witnesses for that purpose. It is an entirely different subject.

Mr. NOBLE: If counsel for Government means to say that he does not introduce this Exhibit or the testimony of Mr. Kroos in respect thereto for the

purpose of showing that there has been any increase in price to the jobber or to the public upon the Standard's "Albion" tub, or other licensed manufactured goods, then counsel for Defendants does not desire to press the question further. 1

Mr. GROSVENOR: Counsel for Government states that this Exhibit No. 256 is introduced for the purpose of showing in respect to these 37 articles the prices which the Kohler Company was receiving for them on June 6th, the time the license arrangement went into effect, and also the prices which they would have received if they had entered into the license arrangement, the last being calculated from the Resale Price List. The separate sheets of the exhibit state certain articles manufactured by competitors of the Kohler people who have entered into the licensing arrangement, the articles of those competitors being, as stated, competing articles to the articles manufactured by the Kohler people, which articles appear on these sheets. The Exhibit does not state prices for any of the Standard goods or any of the licensed manufacturers, either on June 1st, 1910, or at any time subsequent thereto or prior thereto. 2 3

Mr. NOBLE: Does counsel for Government mean by the language used when he says "prices received by the Kohler Company", the amount which was received by the Kohler Company?

Mr. GROSVENOR: I mean the actual amounts received by the Kohler Company for the articles enumerated according to the sales system in effect and enforced by the Kohler Company, that system being enforced by the Kohler Company on June 1st and today, the Exhibit also showing the amounts which the Kohler Company would have received for those same articles if they had entered into the licensing agreement, and had calculated their prices according to the Resale Plan as the witness understands those prices to be applied. 4

Mr. NOBLE: And as he has explained in his testimony?

Mr. GROSVENOR: Yes.

Mr. NOBLE: Then I have no more questions.

1 RE-DIRECT EXAMINATION BY Mr. GROSVENOR:

Q. What do you mean in the trade by the "List price"?

A. The list price is the price subject to a discount—

Q. Is it an arbitrary figure which the manufacturers adopt, not as a standard, but as a fixed figure and then the actual price to the jobber is arrived at by making certain discounts on that list price? A. Yes, sir.

Q. The list price referred to and which appears on these sheets and in Petitioner's Exhibit No. 41, is that arbitrary figure which the manufacturers have adopted as the list price? A. Yes, sir.

2 Q. And the price to the jobbers is arrived at by making certain deductions or discounts?

A. Yes, sir; and adding crating charges.

Q. But the list price simply means this arbitrary figure?

A. Yes, sir.

Q. And that is the custom in many trades, that is, of having a list price? A. Yes, sir.

Q. You have made in these sheets a deduction for freight allowance? A. Yes, sir.

Q. By that I mean you have subtracted, from the amount which you would have received, certain freight al-

3 lowances, is that correct?

A. We have deducted the freight allowance which we would have had to make under the Resale Plan in the various zones.

Q. In other words, from your bill you render to the jobber there is a deduction made of the freight allowance?

A. Yes, sir.

Q. So that the amount which these tables show you would have received from the jobbers are lessened by the freight deduction? A. Yes, sir.

Q. If you had not made these freight allowances, then

4 the amounts which you would have received would have been greater? A. Yes, sir.

Q. In other words, the figures stated in the horizontal line, opposite the words "Net cost to Jobbers", would have been greater?

A. If the freight allowance had not been deducted; yes, sir.

Q. And that is true in each case? A. Yes, sir.

Q. Counsel for Defendants asked you certain questions

about the rules in this price list which is Petitioner's Exhibit No. 41, and your understanding of them; you do not understand, I take it, how those rules were arrived at? 1

A. I don't understand how they were computed or how this price list was compiled.

Q. All you attempted to do was to work out the application of those rules? A. Yes, sir.

Q. You do not know why they were adopted?

A. No, sir.

Q. You have simply, in making your calculations, applied the rules as they were stated as you understood them?

A. Yes, sir; as we interpreted them. 2

RE-CROSS EXAMINATION BY Mr. NOBLE:

Q. Do you prepare the list prices of J. M. Kohler Sons Company?

A. I don't know that that has any bearing on the case, the list prices are shown in our catalogue.

Q. You have testified in reply to counsel for Government that your list price and the list price as it appears in Exhibit No. 41 is an arbitrary figure. Now, I personally do not think you mean that reply. I want to find out if my understanding is correct? 3

A. I have testified that the list price is a figure adopted by the trade from which to allow the discounts and other deductions in order to arrive at the net price.

Q. Now, that list price is compiled, is it not—it is the result of a compilation? A. Yes, sir.

Q. So it is not an arbitrary figure but the result of a compilation? A. Yes, sir.

Q. That is true as to list prices in the trade generally, so far as you know, is it not? A. Yes, sir.

RE-RE-DIRECT EXAMINATION BY Mr. GROSVENOR:

Q. Look at Sheet 1 of Petitioner's Exhibit No. 256; the list price there of the "Czarina" tub of the Kohler Company is $58.50; is that so? A. Yes, sir. 4

Q. And the list price of the resale plan is how much?

A. $83.75.

Q. On the second sheet the list price of the "Carlton" is $55. A. Under the Resale Plan.

Q. And the list price of the Kohler people is? A. $37.

Q. Those list prices mean nothing as far as the actual price received is concerned?

A. No, sir; the discounts vary that apply on them.

Q. So the list price is simply an arbitrary figure?

A. It is an arbitrary figure inasfar as the discounts vary that apply to them; of course, the list prices are compiled; they are calculations made to get at the list price. The list price of one manufacturer on an article is $85 and another manufacturer lists it at $45, and of course the discounts, naturally, will vary.

Q. I mean the list price has nothing to do with the amount received by the manufacturer?

A. It has nothing to do with the net price received by the manufacturer.

RE-RE-CROSS EXAMINATION BY Mr. NOBLE:

Q. Of course, is it not true that the list price has this to do with the list price finally received, that the two bear a definite relation to each other, and that definite relation is measured by the discounts at freight allowance?

A. Of course, the greater the list price the greater the discount.

Q. If you were to start from a net price and calculate back to a list price you would add various sums which are measured by various discounts, if you made up your calculation in that way?

A. Of course, I am not familiar with the way the other manufacturers compile their list prices, whether they start with the net price which they finally obtain, and then add to it to get the price or not—I cannot testify to that.

Q. But there is a definite relation between the net and list price and that is measured by the various discounts, is it not?

A. Of course, the discounts applied to the list will give you the net price.

Examination concluded and signing of deposition waived by agreement of counsel for respective parties.

EDWIN L. WAYMAN, a witness heretofore produced and sworn on behalf of the Petitioner, recalled for further direct examination, testified as follows: 1

DIRECT EXAMINATION BY Mr. GROSVENOR (continued):

Q. I show you a circular on your letterhead addressed to the jobbing trade, dated May 31; did you send that out to the various jobbers to whom you sent the other circulars which have been put in evidence? A. Yes, sir.

Mr. GROSVENOR: I offer that in evidence and ask that it be marked and filed as "Petitioner's Exhibit No. 257." 2

Letter referred to was then marked and filed as "Petitioner's Exhibit No. 257."

Mr. GROSVENOR: That letter reads as follows:

"May 31st, 1910.

"*To the Jobbing Trade:*

"Referring to my letter of May 19th regarding the Resale Price List covering Licensed Sanitary Enameled Iron Ware, and my letter of the 28th, would state that is has developed at the last moment, owing to several changes and additions in the Price List, that it is a physical impossibility for the printer to complete the printed matter in the time contemplated. 3

"This Price List will, therefore, become effective on the morning of June 6th, and the printed matter will be in your hands on that date. I regret exceedingly the circumstances, but the fact that a Price List containing approximately 300 pages with over 35,000 discount calculations, giving delivered prices at all Jobbing Points in every State, and equalizing rates to approximately 4,000 towns, has been compiled and printed in almost four weeks' time, speaks for itself. 4

"Yours very truly,

"E. L. Wayman."

Q. I show you certain telegrams to the Chandler Pump Company, dated June 17, and July 21, and signed by you, and a letter dated July 15, addressed by you to them and a letter to you by them, dated July 20, and ask you if you

remember writing those telegrams and that letter and receiving the other letter?

A. Yes, sir; I think those have been introduced before.

Mr. GROSVENOR: I will offer all those in evidence as "Petitioner's Exhibit No. 258."

Letters and telegrams referred to were then marked and filed as "Petitioner's Exhibit No. 258."

Mr. GROSVENOR: Those read as follows:

"Pittsburg, Pa., June 17-10.

"Chandler Pump Company,
Cedar Rapids, Iowa.

"Please wire me at my expense if you have executed or intend to execute Jobbers license agreements.

"E. L. Wayman."

"Pittsburg, Pa., July 21, 1910.

"Chandler Pump Co.,
Cedar Rapids, Iowa.

"Referring my letter fifteenth could you arrange to meet me in Chicago La Salle Hotel, ten A. M. Monday morning.

"E. L. Wayman."

"July 15, 1910.

"Chandler Pump Co.,
Cedar Rapids, Iowa.

"Gentlemen:—

"I am trying to arrange a meeting of some of the jobbers in your territory who have not signed the License Agreement. Your territory is about the only exception in the whole country where any trouble seems to exist, and it would seem that a joint conference between the parties interested should have the desired result.

"Would you be willing to attend such a meeting if held in Chicago?

"Yours very turly,

"E. L. Wayman."

"July 20, 1910. 1

"Edwin L. Wayman,
Pittsburg, Pa.

"Dear Sir:—

"Replying to your favor of the 15th inst., my time is so wholly occupied I do not see how it would be possible to attend the proposed meeting in Chicago.

"It would have to be shown very clearly to us that there is no illegality connected with a deal of this kind before we would care to become a party to it, even though we were put on as equitable a basis as 2 the river towns.

"I presume you understand we are very small jobbers and it can make but little difference whether we enter into this deal or not.

"We of course are anxious to make as much profit as possible but had we signed any of the contracts that have been sent to us for our signature we cannot see it in any other light than that we would be reducing our profit.

"Yours truly."

3

Q. I show you a circular headed "Suggested form of letter to be sent to the trade, which has been approved by counsel", and ask you if that is the form of letter which you sent to the different manufacturers of licensed enameled iron ware?

A. I remember such a letter; I don't know whether I sent that out to all the manufacturers or not; it is possible that I did.

Q. That was about what time?

A. In March, as I recollect it.

Mr. GROSVENOR: I offer that in evidence as "Petitioner's Exhibit No. 259." 4

Paper referred to was then marked and filed as "Petitioner's Exhibit No. 259."

Q. You testified that a committee was appointed on May 6th, being the same as comprised the former Price and Schedule Committee, said committee being appointed as provided in the License Agreement entered into by the

1 manufacturers on that date; have you kept any minutes of the meetings of that committee since then? A. No.

Q. Have you kept any personal memoranda as to what was done at any of the meetings?

A. No, I simply issued bulletins from time to time to the different licensed manufacturers in the shape of rulings that might either have been approved by the committee or talked about or were my own invention.

Q. Some of these bulletins were the result of actions of the committee and some were your own?

A. Yes, of the committee and myself.

2 Q. Have you those bulletins arranged in order?

A. I have them at my office, yes.

Q. Can you present them at the next meeting?

A. Yes; I wish to add, though, that those bulletins do not represent in their entirety action by the Commission because some of those bulletins were issued from time to time just by myself.

Q. You have testified that some were the result of action by the Commission? A. Yes.

Q. Now, I asked you to produce these schedules which form part of the License Agreement between you and the

3 licensed manufacturers, those agreements being introduced as Exhibits Nos. 13 to 26. Have you those schedules with you? This (indicating) is License Agreement, Exhibit No. 13, similar to the other License Agreements with the manufacturers and contains this sentence, under Paragraph 6: "All terms and conditions relative to prices and discounts now established by the Licensor and set forth in the annexed schedules and made a part hereof"; can you produce those schedules?

A. Yes, this form here (indicating) was the Jobber's License Agreement which was attached to the manufac-

4 turer's License Agreement, and in pencil or in ink—I don't remember which—these following discounts were shown in Paragraph 1, Schedule 1, 7½ per cent.; Schedule 2, 5 per cent.; Schedule 3, 5 per cent.; Schedule 4, 7½ per cent.; exceptions to Schedule 4, 5 per cent.; Schedule 4½, 5 per cent.; Schedule 6, 5 per cent.; and then on some of them I have marked the following percentages that I was calculating the Resale Prices on; by that I mean that to the then published prices of the manufacturers, to arrive at the Resale Prices, I was adding the following percentages;

Schedule 1, 15 per cent.; Schedule 2, 12½ per cent.; Schedule 3, 12½ per cent.; Schedule 4, 15 per cent.; exceptions to Schedule 4, 12½ per cent.; Schedule 4½, 12½ per cent.; Schedule 5, 12½ per cent.; Schedule 6 12½ per cent.; those percentages added to the then published prices would make the Resale prices such that with the discounts provided for in the Jobber's License Agreement, the net prices would equal about 5 per cent. below what was then known as the published prices. 1

Q. Each License Agreement of the manufacturers with you has attached to it a Jobber's Agreement with these discounts stated thereon? 2

A. Yes, but I am not positive about all of them.

Q. Where are those Jobber's Agreements?

A. I presume the manufacturers must have them if they have retained them.

Q. You did not retain a copy?

A. I retained this copy or several other copies which I had from time to time.

Q. Was there anything else attached to that License Agreement other than this Jobber's Agreement?

A. No, not that I know of.

Q. Will you look at Jobber's License Agreement which is Exhibit No. 11 on the last page; that is the part which is filled out by the manufacturer or the jobber who enters into an agreement with the manufacturer and then is sent to you, is that right? A. Yes, sir. 3

Q. Under the heading, "Discounts", there are certain blanks; those discounts which were to be filled in there are the discounts allowed by the Paragraph 1 of this Jobber's License Agreement? A. Yes, sir.

Q. And such special discounts as the manufacturers were permitted to quote under their Agreements with you?

A. Yes, sir. 4

Q. That is all discounts, whether preferential or regular discounts were to be stated there in that in that column?

A. Yes.

Mr. Grosvenor: That will be all.

Examination Suspended.

The taking of evidence was then adjourned until Tuesday, December 20, at 10.30 o'clock A. M., at the Post Office

Building, New York, for the Cross Examination of Edwin L. Wayman.

IN THE CIRCUIT COURT OF THE UNITED STATES,

FOR THE DISTRICT OF MARYLAND.

THE UNITED STATES OF AMERICA,
Petitioner,

vs.

STANDARD SANITARY MANUFACTURING COMPANY, *et al.*,
Defendants.

Post Office Building,

New York, N. Y., December 20, 1910.

Pursuant to adjournment, the taking of evidence for the Petitioner, was resumed in the Post Office Building, in New York, N. Y., on the twentieth day of December, 1910, at 10:30 o'clock A. M.

COUNSEL PRESENT:

EDWIN P. GROSVENOR, Esq.,
Special Assistant to the Attorney-General, for the Petitioner.
HERBERT NOBLE, Esq.,
HARTWELL P. HEATH, Esq.,
on behalf of the Defendants.

Mr. NOBLE: It will not be possible for me to take up the cross examination of Mr. Wayman today. When the hearing was adjourned in Chicago until today, it being then anticipated that Mr. Wayman's cross examination would begin at this time, I had told counsel for the Government that there would be a conference among the defendants and myself and their various lawyers on Friday and Saturday of last week; that that conference was necessary by reason of the fact that the Government had pro-

cured indictments found against these same defend- 1
ants involved in this civil suit upon the same state of facts, said indictments having been found in the Eastern District of Michigan, at Detroit. The conferences to which I referred took place, and there were a large number of lawyers present representing various individual defendants and corporate defendants. We have been able to obtain complete copies of the combination and monopoly indictments, but have not received complete copies of the indictments as to conspiracy owing to a mistake of the printing office in printing them. It was thought by myself 2
and all the counsel present that it was indispensable for the interests of these defendants that a complete examination be made of those indictments in order for counsel to advise their clients upon the situation in which they were placed both in the civil suit and in the criminal suit by reason of the finding of those indictments. This will be readily understood, because it is a matter requiring careful examination and full consideration of the authorities to determine fully what the rights of the defendants are. Between the time of the filing of the indictments and 3
the conferences at my office on Friday and Saturday of last week, it had been necessary for me to visit Washington in connection with the civil case and the criminal case to confer directly with the Assistant to the Attorney-General in charge, in order that various details might be more satisfactorily arranged, and also to go to Detroit to arrange with local counsel and with the District Attorney and the Court as to the manner of giving bail, and the details thereof, and also upon the notice of the Government to go to Chicago to attend upon the further 4
examination of one of the Government's witnesses, and for his cross examination, and for the further direct examination of the witness Wayman. The hearings in Chicago were on Tuesday and Wednesday of last week. Upon leaving Chicago I arrived at my home in New York on Thursday and went into the conferences with the various defendants and their lawyers on Friday, and those conferences have continued continuously since then. They are

now continuing, and they will continue for several days more in order to enable us to come to a satisfactory understanding of the position in which the defendants find themselves both in the criminal cases and in this civil case.

Under those circumstances I called the Special Assistant to the Attorney-General on the telephone on Monday morning, and told him that upon this state of facts here recited it would be impracticable for me to undertake the cross examination of Mr. Wayman today or at any time during the ensuing week, stating to him the reasons which I have just assigned. As I have said, the appearance of the various defendants in the criminal cases will be expected within a short time, and the nature of the pleas which they will enter, and the nature of the motions which they may make, or whatever action they may take in respect thereto, will have to be determined before that time, so that my time will be completely occupied for some time to come, that is, for the next two or three weeks. As the Record will show, and as the Examiner knows, I have had active charge of this litigation ever since the taking of testimony was begun, and before that, and there is no one familiar with the Record save myself, and fully familiar with the facts which it will be necessary for the defendants to bring out in this Record, and which should be known fully to the various counsel whose professional opinion it is necessary to have in order to determine what will be done in the criminal case. There is no one but myself to give them those facts. I have had entire charge of the matter, have examined the various witnesses for the defendants privately, have gotten their views and knowledge of the facts, and it is impossible for me to delegate that work to anyone else. I desire to say that at all times since this litigation has begun, I have endeavored to facilitate the progress of the case on the part of the Government. I have, whenever requested to do so, done everything to facilitate the efforts of the Government to take this testimony, and I am still in that state of mind and attitude, and this request for an adjournment is made

with no thought in the world of causing the Government any delay, but is just one of those circumstances which arise occasionally in the course of litigation and which makes it necessary to request this adjournment. I therefore request the Examiner to grant us an adjournment for thirty days. 1

Mr. GROSVENOR: Counsel for the Government objects to any suggestion of postponement at this time. Conferences in respect to another suit, that is, conferences of counsel regarding that suit, are certainly no ground for an adjournment. Counsel are not engaged in Court in that suit, but state that they simply desire to have conferences in regard to what they shall do in that suit. Now, referring to the facts: Counsel for Government was ready to go on with the cross examination of the witness Wayman last week in Chicago, and that cross examination was adjourned until today with the distinct understanding that it should be had here. In respect to the criminal cases, the indictments were returned on December sixth. Nothing has been done in those cases yet, and I understand bail will be given this week and pleas will be entered early in January. 2 3

I think I should call your Honor's attention to the fact that this sort of a case, that is, a civil suit under the Anti-Trust Act, is entitled to preference above other cases. There was a special act passed on February 11th, 1903, which reads: "That in any suit in equity pending or hereafter brought in any circuit court of the United States under the Act entitled 'An Act to protect trade and commerce against unlawful restraints and monopolies,' approved July second, eighteen hundred and ninety, 'An Act to regulate commerce," approved February fourth, eighteen hundred and eighty-seven, or any other Acts having a like purpose that hereafter may be enacted, wherein the United States is complainant, the Attorney-General may file with the clerk of such court a certificate that, in his opinion, the case is of general public importance, a copy of which shall be immediately furnished by such clerk to each of the circuit judges of the circuit in which the case is pending. Thereupon such case shall be given prece- 4

dence over others and in every way expedited, and be assigned for hearing at the earliest practicable day, before not less than three of the circuit judges of said circuit, if there be three or more; and if there be not more than two circuit judges, then before them and such district judge as they may select."

That Act applies to the hearing of the case and it is equally clear that the taking of testimony shall be expedited as well. I have here a certificate of the Attorney-General saying that this is a suit of public importance, and one which should be expedited. I intend to file this with the Examiner. Of course, we cannot have a hearing before the Judges until the testimony has been taken, and it seems to counsel for Government, after consultation with his superior officer of the Government in charge of the case, that this request for a postponement should be denied, particularly inasmuch as this date was set and no legal excuse has been given for an adjournment. A pending criminal case is not at all ground for a postponement. If it is relevant at all, it is of importance, then, that this case should be expedited. If this case is of sufficient public importance to require a criminal suit, and the criminal suit is necessary, then the civil suit should not be brought to a stop right there. I want to call your Honor's attention now to the fact that this is simply a conference between attorneys respecting another suit. Counsel are not actively engaged on the case in open Court.

Now, counsel will not necessarily be engaged in the hearing of the testimony in this case during the whole of the day. If your Honor thinks that some consideration should be paid to the suggestion of counsel for the defendants, then we can have one hearing either this morning or this afternoon, and then continue again tomorrow. That will give counsel for defendants half a day and the evening for conference, and will not interfere with the progress of this suit. It seems to counsel for the Government that it is almost frivolous to suggest that a mere conference of counsel is sufficient excuse for the adjournment of this hearing, when it was agreed that

the cross examination of the witness Wayman should be specifically taken today. The defendant Wayman is, of course, as your Honor knows, a defendant in this case, and is in constant consultation with the attorneys for the defendants. 1

Mr. NOBLE: I object to the statement of counsel for the government when he says that Mr. Spencer, the Examiner, knows that Mr. Wayman is constantly in consultation with counsel for defendants.

Mr. GROSVENOR: Counsel for defendants has stated that he has been in constant consultation with the defendant, and therefore my statement is correct. 2

Mr. NOBLE: But you said that Mr. Spencer and everybody was familiar with those facts.

Mr. GROSVENOR: This hearing is just like any hearing of a case in Court, and a good legal reason should be suggested for the adjournment of this hearing, and not merely the convenience of counsel. The same rule applies as in any other proceeding. I do not want to be unreasonable, but I want to be perfectly fair to counsel for defendants. If they have these lawyers here in New York, I am perfectly willing to have a hearing this morning for say two hours and then tomorrow morning for two hours, and let them have the rest of the day, but we must proceed with this hearing. 3

Mr. NOBLE: In making my statement, if I did not say that the facts which apply to this civil suit also apply to the criminal suit, then it was a mistake on my part. These conferences necessarily include the consideration, and the ample consideration, of the course which the parties should take in those cases, because the facts involved in both cases are the same. There has been a suggestion that we should have a hearing today for two hours, and a hearing tomorrow for two hours, and so on. That is impracticable. We have not the time necessary to do it, and the reasonableness of my request must be apparent to the Examiner, when he knows from past experience that we have proceeded at all times to accommodate the convenience of counsel for the Government in this case. The worst situation which Mr. Grosvenor has suggested and the most important reason for 4

going on with this hearing is that the Government desires to expedite this case because the Attorney-General of the United States regards it as one of great importance. Now, that is a question to be considered by the Examiner, but the defendants certainly have a right for consideration at the hands of the Court or the Examiner, even if it brings about a little inconvenience to counsel for the Government. I say this because I want the Examiner to know that there is no desire on my part to cause any inconvenience to the Government. That is not my attitude. But, at the present time it is impossible for me to go on, and I again press my request for an adjournment for thirty days.

Mr. ROBERT R. REED (of Caldwell and Reed, of the New York Bar, representing W. B. Garvin, of the Chattanooga Bar, Tennessee, with the consent of attorneys here appearing, appears as counsel for the Cahill Iron Works, Frank H. Caldwell and John J. Mahoney, defendants, and states): The Cahill Iron Works have, on December 17th, 1910, withdrawn from any further connection with the combination and license agreement alleged in the Petition and will at the earliest opportunity ask leave to substitute and file a Supplemental Answer. The defendants named are indifferent as to the request for adjournment, provided that a reasonable opportunity shall be given Mr. Garvin, after examining the testimony, to cross examine the witness Wayman.

The EXAMINER: The only evidence which it was proposed to take at this meeting, as I understand, was the evidence of Edwin L. Wayman on cross examination. Mr. Wayman not being present, I will ask counsel for Government, who opposes the suggestion of counsel for the defendants, what suggestion he has to make.

Mr. GROSVENOR: I will ask Mr. Noble to take the stand and be sworn.

The EXAMINER: Mr. Noble, counsel for the Government has requested that you be sworn. Have you any objection to being sworn?

Mr. NOBLE: I have not been subpœnaed as a witness here, and I am appearing merely as counsel.

Mr. GROSVENOR: I want to ascertain where the witness is who was present at the last hearing, who is one of the defendants in the case, and who is one of your clients. I asked Mr. Wayman at the time if he could be here at this meeting, and if this was as convenient as Pittsburgh, and he said that it was. I now ask you to be sworn for the purpose of examining you as to why Mr. Wayman is not here, in order that the Examiner may determine this question of adjournment. 1

Mr. NOBLE: I have stated to counsel for the Government that at the various conferences which took place here— 2

Mr. GROSVENOR: I want Mr. Noble to be sworn in order that I may ask him some questions as to the absence of the witness.

Mr. NOBLE: I have stated that Mr. Wayman was here to be present at the conferences on Friday and Saturday—

Mr. GROSVENOR (interrupting): I want Mr. Noble sworn.

Mr. NOBLE (continuing): And he asked me if I would be able to cross examine him on Tuesday, and I told him that it would be utterly impossible for me to do so. I presume that Mr. Wayman went back to Pittsburgh, and I presume that Mr. Wayman is in Pittsburgh now. If the Examiner orders that the hearing proceed tomorrow, of course I will do everything in my power to get Mr. Wayman here as soon as possible. 3

Mr. GROSVENOR: I again ask that Mr. Noble be sworn.

Mr. NOBLE: I decline to be sworn in a case of this sort, as there does not seem to be any reason for it. I will state, however, that I have truthfully stated the facts. If the Examiner decides that this hearing ought to proceed, of course I will do everything in my power to have Mr. Wayman here, and I have no doubt in the world that upon telephoning to Mr. Wayman he will come on the earliest train and be here promptly. 4

Mr. GROSVENOR: Tomorrow morning for cross examination at ten o'clock?

1 Mr. NOBLE: As soon as it is possible for him to get here, of course.

Mr. GROSVENOR: If counsel for the defendants will agree to have the witness Wayman here tomorrow morning for cross examination at ten o'clock, then counsel for the Government will not object to the postponement of the hearing until that time, and will not insist upon the swearing of Mr. Noble as a witness.

Mr. HEATH: I would like to say a few words. I happen to know that yesterday, as soon as this matter
2 was in a situation so that the facts could be known, I was in the room with Mr. Noble and heard Mr. Noble tell Mr. Grosvenor over the telephone that he was telephoning to him to save him the trouble and expense of coming here to New York. Mr. Grosvenor apparently insisted and Mr. Noble afterwards hung up the receiver. Mr. Grosvenor telegraphed and said that he insisted on the hearing going on. I think that the fact that defendants' counsel telephoned to Mr. Grosvenor as soon as the facts were known shows that we wanted to expedite the matter
3 as much as possible.

Mr. GROSVENOR: Let me ask Mr. Heath if he saw the telegram which I sent from Washington yesterday stating that I would insist upon the examination of the witness Wayman going on today.

Mr. HEATH: Yes, sir; I stated that we received the telegram, and of course the only thing to be done then was to make this motion to the Examiner.

Mr. GROSVENOR: Will counsel for the defendants produce the witness Wayman tomorrow for cross examination?

4 Mr. NOBLE: I have made my motion to the Examiner, and I am awaiting his disposal of it.

Mr. GROSVENOR: The Examiner has said that he cannot decide until he knows where the witness Wayman is. You have asked for an adjournment of thirty days. You agreed once to have Mr. Wayman here, and now you have not him here.

Mr. NOBLE: I deny emphatically the false statement of Mr. Grosvenor which was just made.

Mr. GROSVENOR: I ask that Mr. Noble be sworn.

Mr. NOBLE: I am amazed at counsel for the Government losing his patience to such an extent as to make the statement which he has just made. 1

Mr. GROSVENOR: Read my statement. In what respect am I incorrect?

Mr. NOBLE: Take the word "false" out, and make the word "incorrect"; I have no desire to be disagreeable in my language. The incorrect statement was that I agreed to have Mr. Wayman here. There was no conversation between Mr. Grosvenor and myself at which I ever agreed to have him here. The fact is that when we adjourned before, counsel for 2 the Government and I both anticipated going on today with the cross examination of Mr. Wayman. There is no suggestion that that is not true, but I explained to counsel for the Government over the telephone yesterday the impracticability of doing so, and I am now making my motion to the Court on the same ground. There is no thought of anybody trying to keep Mr. Wayman away from this cross examination, and no desire to prevent him from being present. It is only the fact that I told Mr. Wayman that he need not come today that has caused 3 his absence. I told Mr. Wayman that he need not come today, because it would be impossible for me to go on with the cross examination.

Mr. GROSVENOR: I must insist that Mr. Noble be sworn as a witness in order that I may examine him as to why Mr. Wayman is not here today. This right I will waive if Mr. Noble will agree to have Mr. Wayman here tomorrow for the purpose of cross examination. Otherwise I demand it as my right to examine counsel and have him tell me why that witness is not here, for the purpose of assisting the 4 Examiner in deciding whether or not an adjournment should be granted, and if granted, until what time.

Mr. NOBLE: I have stated a number of times, and I repeat the facts about the matter.

Mr. GROSVENOR: I refuse to accept this statement, and I object to it.

Mr. NOBLE: I have also stated that if the Examiner does not care to fix the time at any remote date, I

will agree to have Mr. Wayman here at any time that the Examiner tells me to.

Mr. GROSVENOR: Tomorrow morning?

Mr. NOBLE: At any time that the trains can get him here.

Mr. GROSVENOR: I ask then, that this hearing be adjourned until tomorrow morning at ten-thirty o'clock, for the purpose of cross examining Mr. Wayman.

Mr. NOBLE: Counsel for Government having acted in the manner he has, I think it is perfectly proper for me to state on the record that during my conference over the telephone with him he told me that all he wanted to do was to get the Government's case closed, and not leave the case in an uncertain condition, due to the non-cross examination of Mr. Wayman. We understand that position fully. There is not the slightest desire on our part to leave the Government in that position. Therefore, any time that the Examiner desires to adjourn this meeting to, I am willing to notify Mr. Wayman and have him here.

Mr. GROSVENOR: I am content to adjourn until tomorrow morning at ten o'clock, and it seems to me that is right after counsel for the Government has come here and demanded that the hearing go on. The witness is not here, and the witness is a defendant. The counsel present are counsel for that witness and for that defendant. I am willing to waive the question as to why he is not here, provided that we adjourn until tomorrow morning for that cross examination, with the understanding that counsel have him here then.

The EXAMINER: Will the stenographer read Mr. Noble's last statement.

The stenographer then read the statement referred to.

Mr. NOBLE: I again ask for an adjournment.

Mr. GROSVENOR: There is nothing which I can add to my remarks. Counsel can have all of today for further conference and such time tomorrow as remains after hearing the cross examination, which can

be one session of two hours or more, whichever the Examiner may direct. 1

Mr. NOBLE: I have stated that it will be impossible for me to go on with the cross examination either today or tomorrow or any other time until we get these indictments disposed of. In making that statement, I want it understood that I am simply explaining my position. I do not mean that in any contumacious sense at all. Of course, your Honor may not know that this question of the Government proceeding under the Sherman Act, and thereafter, while the civil suit is still pending, having indictments found is somewhat novel, and in a recent case where that has been done, I am informed, a motion is now pending to bring about a complete stay until the Court shall determine which of the two cases shall proceed first. 2

Mr. GROSVENOR: What has that to do with the cross examination of a witness whose direct examination is already in?

Mr. NOBLE: The defendants certainly have a right to consider whether they will or will not—without intimating that they will not—go ahead with a civil suit under the circumstances. It is perfectly proper for them to take advice of their respective counsel, to go over the grounds very carefully and the facts involved, and determine their legal significance. Unseemly haste, even at the request of counsel for the Government, is not necessary. Nothing is to be lost by the Government by this adjournment which we have requested. As far as the expedition of this case is concerned, it has been going along with all the rapidity which the Government wanted to give to it, and this is the first time that the defendants have in any way intimated a desire to have any time given them. Now, the reason for making the request has been stated. I submit that this is entirely a reasonable attitude to take. The suggestion of counsel for the Government that we have to present a legal excuse in the sense defined by him that counsel must be actually engaged in Court in order to ask for an adjournment, is not legal practice. There is a rule in practice in New York that 3 4

1 if a case comes up on the calendar, you must be engaged in Court in order to have that case continue. That is not, however, the practice in the United States Court, and it is always a matter resting in the sound discretion of the Examiner or the Court. There is no rule requiring you to sit on any particular day or to say that because a date was set it could not be adjourned. There is a rule in equity that after permission has been granted to take testimony, the testimony shall be taken within ninety days, unless the time be extended, but that rule
2 which has been quoted by counsel for the Government is not intended to modify the rules of the Supreme Court of the United States, which are the rules governing this practice, but merely is intended to expedite the hearing of the case after the testimony has been taken, or when the case is ready that it may be preferred above the other cases which are pending.

Now, in the order appointing you the matter is left to your sound discretion.

Mr. GROSVENOR: The previous statement of coun-
3 sel for the defendants that this is the first time that any adjournment has been had at the request of counsel for defendants is not exactly so, because at the last hearing in Chicago the plaintiff, that is, the United States, was ready to go on with the cross examination of the witness Wayman, and that meeting was adjourned at that time until this date in order to accommodate counsel for the defendants.

Mr. NOBLE: Well, if my statement is inaccurate in that regard, I will correct it, of course. The Examiner realizes, of course, that these hearings have thus
4 far preceded in point of fixing times of hearings and so forth quite informally. Counsel for the Government and counsel for the defendant have fixed a date and the Examiner has been notified that that date was the convenience of counsel for both sides, and we have not insisted in any way upon the technical points as outlined by the Order, and this is the first time either side has called for the technical things. Counsel for the defendants has appeared to be anxious to accommodate as much as possible, and I do not think

that his reputation at this time should be thrust aside and disregarded. The only possible thing which the government has involved in this matter is that of getting the testimony closed. Now, whether it is closed today or some other day, cannot possibly harm them, and in view of all the circumstances counsel for the defendants should have all the time requested. 1

Mr. GROSVENOR: We are apt to lose sight here of the fact that this is a suit to enforce a law which Congress has considered and deemed most important, and it has made it plain by passing the act to which I called your Honor's attention. This is a suit for a violation of the Sherman Act, and Congress has said that cases of this character are particularly important, and it passed an Act moving the hearing of those cases from before one judge to three judges, and it said that those cases should be heard in preference to other pending cases. Counsel for the Government is simply trying to enforce and carry out the law as enacted by Congress. The Government believes that the Sherman Act in this case has been violated. Congress gives us the power to oppose such violation. It then says that counsel for the Government shall see that the case is expedited. Now, is a conference of the counsel for the defendants in another suit reasonable grounds for the adjournment of this hearing? We are not insisting on a technical point or right, but we are trying to carry out the laws of Congress, and Congress says that a suit to restrain the violation of the Sherman Act is particularly important to the people and, irrespective of whether, or not the government establishes the facts which it alleges, it is entitled to have the case heard and tried expeditiously. Congress says that the case shall be expedited and shall be heard before three judges, and then before the Supreme Court of the United States. Now, shall we adjourn this hearing, simply because counsel for the defendants wants to confer about another case when they have been conferring for four or five days? They can confer after we have concluded taking the testimony on each day. Is this suit—which Congress has declared to be of importance—is that suit entitled to no consideration, 2 3 4

not even a minute's consideration, not even an hour out of the whole day?

The EXAMINER: As the Examiner understands counsel, counsel for the Government contends that as a matter of right the taking of this testimony should continue at this time in the absence of what is considered in many Courts, the only sufficient excuse for postponement, namely the engagement of counsel in another Court. Counsel for defendants contends that the whole matter is absolutely within the discretion of the Examiner.

As I understand counsel for defendants, he asks for an adjournment of thirty days on account of conferences which he states began last Friday and which are still continuing, which conferences have been necessitated by reason of the institution of criminal proceedings against those who are parties defendant in these proceedings. Do I understand counsel correctly?

Mr. NOBLE: Yes, sir; so far as you have gone, of course.

The EXAMINER: As I understood, when the taking of testimony was adjourned last week in Chicago it was adjourned to this time and place, and I understood that to be by agreement of counsel. It was not opposed certainly by either counsel, and the adjournment was taken for a definite purpose. At that time the facts were known pretty fully. The reasons which are now urged for a postponement existed, in large part, at least, at that time; and, in view of the fact that no suggestion was then made, and the Examiner has heard of no such suggestion until now, I am inclined to think that the Examiner ought to give effect to the spirit of the Act referred to in the certificate and request of the attorney general, to which counsel for the government has referred, and which he has handed to the Examiner.

Mr. NOBLE: I do not mean to interrupt, but there is one thing which you misapprehend. The reasons for this request for an adjournment and the facts and circumstances were, of course, not known at the hearing in Chicago. They have entirely supervened since then.

Mr. GROSVENOR: The indictments were returned on December sixth. 1

Mr. NOBLE: At the hearing in Chicago counsel for the defendants announced to counsel for the Government that the conferences referred to were going to take place, and I, of course, could not tell what would happen by reason of those conferences, and I say that counsel for the Government should not be taken by surprise, but was treated, as lawyers always treat each other, with full confidence. It is not a matter of surprise to counsel for the Government knowing those facts. I make that statement to correct the misapprehension of the Examiner. 2

Mr. GROSVENOR: No, I think the Examiner was correct. I was distinctly surprised when counsel for the defendant called me up and asked for an adjournment, as I had considered it with him in Chicago and spoke of the necessity of having the testimony taken after an adjournment of only a week. It seems to me that the Examiner has stated the facts in the case correctly.

The EXAMINER: Gentlemen, is there any intermediate date that you could get together on? 3

Mr. GROSVENOR: No, I must ask for an adjournment until tomorrow, according to our understanding. We could go on today if the witness was here, and counsel has agreed to have him here tomorrow.

Mr. NOBLE: I wish to state to the Examiner that I am perfectly willing to attempt to agree with counsel for the Government upon an intermediate date. I understand that the appearance day of the defendants in the indictments will be early in January, my information being that it is the fourth. Now, within a few days after that, I could very probably go ahead. 4 Of course, you realize the Christmas holidays intervene, and it makes it difficult for people to do work then because those are times when people like to be in their own homes, and not away on legal conferences.

Mr. GROSVENOR: That is why we should start today or tomorrow, at least, and have sessions of two hours each day, and allow counsel for defendants the rest of the day for their conferences.

Mr. NOBLE: In order that the Examiner may un-

derstand the physical labor that is required of me at this time, you must appreciate that there are forty-nine of these defendants all told, indicted. There are two indictments, and these people live, I think, in ten different states of the union. Now, they have many lawyers in those various communities. The conferences cannot take place here in New York alone, but it is necessary for me to go elsewhere, and I expect to leave this afternoon, unless the Examiner requires me to stay here. That is the physical or practical situation which I wish to present. In view of that, I think the Examiner must appreciate that I am not acting unreasonably.

Mr. GROSVENOR: Counsel has stated that the reason he wants an adjournment is so that he can have these conferences here with all the lawyers who are in New York. That was the statement which he made. Now he says that he must leave town this afternoon. This whole motion for an adjournment is simply to gain time, and is not substantial.

Mr. NOBLE: Of course counsel for the Government may re-state my remarks. It is true that I said that many counsel for the defendants are here now and that conferences are proceeding. It is much more convenient, however, for counsel to have these conferences proceed at another point where we can see other men, and it is for that reason that I mentioned that we would leave town today if it was feasible.

The EXAMINER: The fourth of January is the date for the appearance?

Mr. NOBLE: I think that is the date, exactly.

Mr. GROSVENOR: I cannot see what a criminal case has to do with this one. However, I think your Honor has the situation before you, and you were summing the matter up accurately when we interrupted.

The EXAMINER: There is no question of interruption. I am very glad to get all the light I possibly can on the matter, and it is very disagreeable to me to incommode counsel on either side.

Mr. GROSVENOR: In such cases we must be governed, it seems to me, by the Acts of Congress.

The EXAMINER: I feel that I am compelled to rule in favor of an adjournment until tomorrow.

Mr. GROSVENOR: At what time, ten-thirty? 1

The EXAMINER: I want to consult the convenience of counsel for defendants as far as I may as to the hour, at any rate.

Mr. NOBLE: I have said enough for the Examiner to know that it is impossible for me to go on with the cross-examination tomorrow.

Mr. GROSVENOR: Counsel has said that he would produce Mr. Wayman tomorrow if I did not put him on oath.

Mr. NOBLE: I will do anything that the Examiner directs me to do, of course, but I made no such agree- 2
ment with counsel for the Government at all.

Mr. GROSVENOR: But you stated that on the record.

The EXAMINER: I understood you to say that you would produce or make an effort to produce Mr. Wayman tomorrow.

Mr. NOBLE: If you direct me to do so, I will do so. I always try to do what I can. I have told your Honor that I cannot go on tomorrow. I say that respectfully and not contumaciously. I want—

Mr. GROSVENOR: I suggest, then, that we adjourn until tomorrow morning, and the question can be 3
settled then.

Mr. NOBLE: When counsel for Government stops interrupting, then I will continue. I have stated frankly the situation, and Mr. Grosvenor at first said that he would not insist on going on; he told me that very frankly over the telephone, and then later sent me a telegram which has been referred to here. I thought the convenience of counsel was a matter that the Court would consider somewhat, and let it govern its action. Of course, I am disappointed at the result of the Examiner's views. 4

Mr. GROSVENOR: In the absence of any suggestion as to the hour of adjournment, I suggest that we meet tomorrow morning at ten-thirty o'clock.

Mr. NOBLE: I would like the Examiner to consider my last remarks in this connection.

Mr. GROSVENOR: By the way, there is another thing that occurs to me as a reason why we are anxious to have this cross-examination. On the hearing of a case of this sort, it is always essential to have the record

printed. This record is being turned over to the printer as quickly as possible. We have everything turned into page proof down to the cross-examination of the witness Wayman, and they cannot put any more into page proof until that also has been put into page proof, otherwise it will require the entire re-adjustment of the pages and references. I have been so advised by the Appeal Printing Company. That is another reason why we are anxious that this record should be finished. Of course, it is difficult to have these large volumes printed. We have already nine hundred and sixty type-written pages. The defendant's case will be long, and that must all be in book form before we can prepare the briefs, and if we adjourn now, that will also impede the progress of the case.

Mr. NOBLE: As far as the question of printing is concerned, it is a matter of twenty-four hours; the Appeal Printing Company so informs us. They informed us also that the Government had requested them to stop printing the exhibits until they had arrived here today.

Mr. GROSVENOR: Well, the exhibits are entirely in a separate volume. The record, however, has to be printed consecutively.

Mr. NOBLE: I still urge upon your Honor the adjournment which we have requested, at least until January, sixth, say, at ten-thirty o'clock.

The EXAMINER: I am afraid that I must stand by the ruling. I cannot please both of you gentlemen.

Mr. NOBLE: You desire me to bring Mr. Wayman here tomorrow?

The EXAMINER: Yes, sir; we will make it at ten-thirty o'clock.

Mr. GROSVENOR: We will all agree if counsel for defendants prefers to adjourn now to Pittsburgh—to go to Pittsburgh and have the hearing tomorrow morning in Pittsburgh. If Mr. Noble is going to Pittsburgh, we will not object, but we will go to Pittsburgh also and take the testimony there.

Mr. NOBLE: I have no other request to make of any character whatever.

Mr. REED: The Cahill Iron Works would not wish to be put to the trouble of employing Pittsburgh counsel on such short notice.

(At this point the hearing was adjourned until the following morning at 10:30 o'clock A. M.)

1 IN THE CIRCUIT COURT OF THE UNITED STATES

FOR THE DISTRICT OF MARYLAND.

THE UNITED STATES OF AMERICA,
Petitioner,

vs.

STANDARD SANITARY MANUFACTURING COMPANY, *et al.*,
Defendants.

2

Post Office Building,

New York, N. Y., December 21, 1910.

Pursuant to adjournment, the taking of evidence for the Petitioner was resumed in the Post Office Building, New York, N. Y., on the twenty-first day of December, 1910, at 10:30 o'clock a. m.

COUNSEL PRESENT:

3 EDWIN P. GROSVENOR, Esq., Special Assistant to the Attorney-General, for the Petitioner.
HERBERT NOBLE, Esq., on behalf of the Defendants.
ROBERT R. REED, Esq., on behalf of the Cahill Iron Works and Frank H. Caldwell and John J. Mahoney.

MR. NOBLE: Counsel for Defendants renews his motion made yesterday for a reasonable adjournment, and calls the Examiner's attention to the fact that the order appointing him provides that the said Examiner may, if necessary or convenient for the re-
4 spective parties, continue the hearings from time to time by order made and entered during any regular and noted hearing had hereunder. That provision escaped my attention yesterday, and I presume it escaped the Examiner's attention, knowing the convenience of the parties is a consideration which the Examiner has a right to bear in mind.

I also make the offer on the record to undertake the cross examination of Mr. Wayman at a subsequent time, either to be agreed upon between the

parties or to be fixed by the Examiner, at a time when he thinks, under all the circumstances, that it should proceed, and if by that time and the ensuing session thereafter, shall from day to day or as counsel agrees, the cross examination has not been undertaken and pushed to a conclusion with all reasonable dispatch, that then the cross examination of Mr. Wayman by counsel for Government be deemed waived, with the necessary consequences following from a failure to cross examine as to the standing of the direct testimony, usual in law. The further consideration, together with what was said yesterday by me, I now submit to the Examiner for his consideration and determination. 1 2

Mr. GROSVENOR: I renew the objections which I made yesterday to any adjournment or postponement of the cross examination of Mr. Wayman. The Paragraph of the order appointing the Examiner, which Mr. Noble just read to your Honors you will notice was worded, "Not convenient for the parties". That is plural. Now, it is not convenient for the Government to adjourn this hearing, as I stated yesterday, so it will only be in accordance with the order for your Honors to rule as you did yesterday. This is the cross examination of the Defendant, who has attended all the hearings of the testimony and who is in Court today, and it seems to me there is no reason why we should not go on with this cross examination. I want to say that if counsel declines to cross examine today, I shall ask for an adjournment until tomorrow, as I have one witness who is on his way here, and then if counsel for Defendants declines to cross examine, I shall close the case for the Government, as we will have completed our case after the taking of this testimony, and I shall then ask for adjournment until such a time as the Defendants desire to begin their case. That is what my course of action will be. 3 4

Mr. Wayman is here now, and if counsel for Defendants do not go on, I shall ask that we adjourn until tomorrow and then I shall call my other witness and renew my request for the cross examination of this witness, and close the Government's case. It

might appear that I am asking for the cross examination of my own witness. But, this is one of the Defendants and of course it is up to the Defendants. If they do not want to cross examine the witness, they do not have to do it. It is their privilege. We will simply close our case, and as Mr. Wayman is a Defendant he can be called when they submit their case. That is my position.

Mr. NOBLE: I would like a ruling on the motion made by me, and I presume for your convenience you would prefer to rule separately on the motions before you.

Mr. GROSVENOR: Your motion is for an adjournment to day?

Mr. NOBLE: Yes, sir; on the grounds which I have already stated.

THE EXAMINER: It seems to me that the paragraph following that one to which you called my attention gives authority for me to hold hearings on application of either party at such time as I may appoint in my discretion. But, of course, the convenience of both parties was absolutely considered last week in Chicago, when this time and place was fixed, and I do not think that I ought to modify the ruling which I made yesterday. Of course, as Mr. Grosvenor has just mentioned, this is a question of the cross examination of a witness for the Government, and as a consequence of a failure to cross examine at this time, it might be—and it is the only consequence—the closing of the Government's case without that cross examination being in. If I am in error in holding as I do, the matters would no doubt be corrected, and any rights which the Defendants have in the premises be preserved by an application to the Court which made the appointment and which provided for the taking of this testimony.

Mr. GROSVENOR: Your Honor, then, declines to grant an adjournment at this time?

THE EXAMINER: An adjournment such as was suggested yesterday.

Mr. GROSVENOR: May I ask counsel for the defense if they will go on with the cross examination of Mr. Wayman, who is present in this room at this time?

Mr. NOBLE: Before answering, I want to know if 1
the Examiner intends by the ruling which I understand him to have made to intimate that if counsel for Defendants cross examined or commenced the cross examination of Mr. Wayman at this hearing that you hold that counsel for Defendant is precluded from cross examining him?

THE EXAMINER: No, I desire to make no ruling on that point whatever; I am only stating what the consequences might be.

Mr. NOBLE: Then, your exact ruling is what?

THE EXAMINER: All I say is that I renew the 2
ruling which I made yesterday, and in that ruling was that an adjournment would be made until today, and I adhere to that.

Mr. NOBLE: Then, I want to make a motion today for the adjournment of the cross examination of Mr. Wayman for a reasonable time, suggesting that under the circumstances heretofore stated in the record, a reasonable time is two or three days after the fourth of January, 1911.

Mr. GROSVENOR: I renew my objections to that motion which I stated yesterday. 3

THE EXAMINER: My ruling will be to overrule the motion.

Mr. GROSVENOR: Now, let me ask counsel for Defendant whether he will proceed with the cross examination of Mr. Wayman, who is present in the room at this time?

Mr. NOBLE: Counsel for Defendant presents respectfully to the Examiner that it is oppressive to require him under the circumstances stated to proceed with the cross examination of Mr. Wayman today, and respectfully suggests that the Examiner 4
should not exercise the power, if he possesses it, and respectfully presents that he does not possess the power, to order that the cross examination of Mr. Wayman proceed upon any penalty of being foreclosed from cross examining him at any future date, such as was perhaps intimated by the Examiner, but as he said not intended as ruling.

THE EXAMINER: No, if I have not been entirely

clear, I do not mean to say that would be the consequence of my ruling, but I do say that that would be as far as the consequence of that ruling could as far as I can see, possibly go.

Mr. NOBLE: I renew my protest against the Examiner requiring the cross examination of Mr. Wayman to proceed today and I ask him if he does require the cross examination to proceed?

Mr. GROSVENOR: There has been a motion for an adjournment and that motion was denied. I understand that the Examiner cannot force Mr. Wayman to take the stand. I would like to put Mr. Wayman on the stand and ask him some questions as to how the situation is today in respect to the case, which I think will help us in arriving at a conclusion.

Mr. NOBLE: I asked for a ruling on my request?

Mr. GROSVENOR: The cross examination has not been started and I have some questions that I want to ask Mr. Wayman before I turn him over for cross examination.

THE EXAMINER: It seems to me that Mr. Wayman being in Court and being a witness for the Government, the Government can question him.

Mr. GROSVENOR: I want the cross examination to continue now.

Mr. NOBLE: I call attention to counsel for Government that in Chicago he concluded the examination of Mr. Wayman.

Mr. GROSVENOR: I want to ask Mr. Wayman why he was not here yesterday and certain questions as to why he was at all the hearings to show that he was helping counsel for the Defendant and to show the counsel for the Defendants are in a position to go on with the cross examination. I have no more questions to ask bearing on the violation of the Sherman Act or to show that the Defendants have combined for the purpose of restraining trade, but I want to examine him on this matter alone.

THE EXAMINER: There is no objection made by counsel for the Defendant.

Mr. NOBLE: I do, however, note exceptions to all the rulings the Examiner made on my motion.

EDWIN L. WAYMAN, a witness heretofore produced and sworn, recalled by the Petitioner for further direct examination, testified as follows: 1

DIRECT EXAMINATION BY Mr. GROSVENOR (continued):

Q. Mr. Wayman, you have already been sworn?

A. Yes.

Q. You are a defendant in this case? A. Yes, sir.

Q. You were called as a witness for the Government at the hearings in Pittsburgh? A. Yes, sir.

Q. You were the first witness for the Government?

A. Yes, sir. 2

Q. You were on the stand for three days in Pittsburgh?

A. About three and one-half, I think.

Q. The hearing there lasted four days? A. Yes, sir.

Q. And you were on the stand three and a half days?

A. Yes, sir.

Q. After the conclusion of your testimony, several other witnesses were called, were they not? A. Yes.

Q. You remained in Court during the examination of those witnesses? A. Yes.

Q. You were suggesting questions to your counsel, that is the counsel for the Defendant, from time to time during 3 the examination of those witnesses? A. Some.

Q. That night the hearing was adjourned to Chicago on the next day? A. Yes, sir.

Q. And that night you went to Chicago with counsel for the Defendant? A. Yes, sir.

Q. There was no suggestion that you were present at Chicago on the part of the Government, was there? A. No.

Q. The hearing in Chicago lasted one day, during which a number of witnesses were examined by the Government?

A. Yes.

Q. You were present at those hearings? A. Yes. 4

Q. You suggested questions from time to time to counsel for the Defendant, that is questions which he should ask the witnesses? A. Yes.

Q. You were present at both of the Chicago sessions, that is the morning and afternoon hearing? A. Yes.

Q. And now, the next hearing after the Chicago hearing was in New York; is that right? A. Yes.

Q. That lasted one day? A. I think.

1 Q. You were not called as a witness for the Government then, were you? A. No.

Q. But you attended that hearing? A. Part of it.

Mr. NOBLE: It was thought that the cross examination of Mr. Wayman would go on at that time and counsel will recall that he had a number of witnesses to examine and suggested that the cross examination of Mr. Wayman not go on at that time.

Mr. GROSVENOR: I cannot say that I recall that.

Q. At any rate, Mr. Wayman, you were present on that
2 day? A. Yes, sir.

Q. And you left—

A. (Interrupting): In the afternoon.

Q. While you were here a number of witnesses for the Government were being examined? A. Yes.

Q. And during that examination by counsel for the Government you were conferring with and suggesting questions to counsel for Defendants and which they asked these witnesses on cross examination? A. Yes.

Q. There was another hearing in Chicago on December 13? A. Yes.

3 Q. You were present there? A. Yes.

Q. With the expectation of being cross examined on that day? A. I don't remember.

Q. Well, you were present? A. Yes, I was present.

Q. The witness, Mr. Kroos, was examined at that hearing? A. Yes.

Q. Mr. Kroos produced certain tables or figures?

A. Yes.

Q. You were present during that examination?

A. Yes.

Q. And during the cross examination of Mr. Kroos you
4 assisted Mr. Noble in suggesting to him questions which he should ask in conducting the examination? A. Yes.

Q. Mr. Kroos produced an exhibit consisting of tabulations as to prices, consisting of 37 pages and containing tabulations of prices which he said he had formed from the Resale Price List and the rules therein; do you remember that? A. Yes.

Q. And the cross examination by Mr. Noble was with reference to those tables? A. Yes.

Q. You had seen those tables before that time, had you not? A. One day. 1

Q. And you had other tables which had been drawn up to see if his tables were accurate?

A. No, I had inserted in his tables lead pencil marks showing the correct figures; his were not correct.

Q. Then you had been over those tables?

A. Some of them; I did not have time to go over all of them.

Mr. NOBLE: Won't you bring out the fact that you had requested counsel for the Defendant to have Mr. Wayman in Chicago and that you then put him on the stand there and asked him certain questions? 2

Q. Yes, I did ask him certain questions, didn't I?

A. Yes, sir.

Q. And we adjourned to New York on Tuesday?

A. Yes, sir.

Q. I asked you if it was as agreeable to you as Pittsburgh and you said it was all right? A. Yes.

Q. You were present in Chicago on the 13th during the whole hearing? A. Yes.

Q. And you went from Chicago to New York that night with your counsel? A. No. 3

Q. You went as far as Pittsburgh?

A. Yes, we were on that train and I got off at Pittsburgh.

Q. When did you come to New York?

A. Friday of last week.

Q. Then you were here Friday, Saturday and Sunday?

A. Yes, sir.

Q. And you saw counsel? A. Yes.

Q. When did you leave? A. Sunday night.

Q. You left for Pittsburgh Sunday night? A. Yes. 4

Q. Messrs. Noble, Jackson & Hubbard have been your attorneys throughout this period during which the License Agreement was discussed?

Mr. NOBLE: Objected to as being indefinite and not clear. Furthermore, I do not think he need tell who his advisers are.

Mr. GROSVENOR: I want to show that Noble, Jackson & Hubbard are qualified and prepared to go on

1 with this cross examination today and that they can do so.

Mr. NOBLE: I stated yesterday on the record that I have had exclusive charge of this examination and nobody knows anything else about it—that is, not exactly nothing about it, but very little.

Q. When did you retain Messrs. Noble, Jackson & Hubbard in respect to this licensing arrangement?

A. About the middle of March.

Q. That was prior to the meeting at the Hotel Astor on March 29 and 30?

2 Mr. NOBLE: I object to that unless you ask him if it was at a meeting which Mr. Wayman requested the gentlemen to meet him at.

A. I went to them along about the middle of March, to consult them about some paragraphs in my License Agreement.

Q. Then, from about the middle of March you were conferring with these various defendants at times, until May 6th, when they met you to sign the License Agreement?

A. Some, yes.

3 Q. During that time were you consulting with Noble, Jackson & Hubbard? A. Yes.

Q. With what member of that firm?

A. Mr. Jackson, and Mr. Noble took up the case from that time.

Q. Mr. Jackson was your counsel during the period of negotiations? He was your counsel until you had put into effect this License Agreement on May 6th, is that right?

A. Yes.

Mr. NOBLE: The witness testified that he consulted
4 various lawyers in respect to that.

Mr. GROSVENOR: I want to show that the counsel for Defendant is prepared and can go on with this cross examination.

Q. Now, the Bill in Equity was filed in July. At that time, Noble, Jackson & Hubbard were your counsel, were they not? A. Yes, sir.

Q. They have been your counsel throughout this litigation? A. Yes, sir.

Q. Has any other defendant been present at all of these hearings? 1

THE WITNESS: At all of these hearings?
Mr. GROSVENOR: Yes.

A. No, I think not.
Q. But you were present at all except yesterday?
A. Yes.
Q. Why were you not here at the meeting yesterday?
A. I left New York under the impression that the meeting was to be postponed.
Q. That was Sunday? 2
A. Yes, sir; and I was thoroughly under the impression that the meeting would be postponed; if I had known it was to be held, I would have remained in New York.
Q. You were asked at the Chicago meeting to produce certain papers; did you bring those with you? A. Yes.

Mr. GROSVENOR: I am through with the witness Wayman and I now offer him for cross examination by counsel for the Defendant.

Mr. NOBLE: Counsel for Defendant again says that he is unable to proceed with the cross examination of Mr. Wayman and requests the adjournment asked for, having stated the reason previously. 3

Mr. GROSVENOR: If counsel will not cross examine Mr. Wayman, I will ask for an adjournment until to-morrow, as I expect one more witness, and then I will again ask Mr. Noble to go on with the cross examination of Mr. Wayman and then I shall close my case tomorrow for the Government.

Mr. NOBLE: I do not know whether there is any use for me to suggest it, but the notice of the taking of the testimony of another witness to-morrow is rather short. The Examiner said that no matter what position the Defendant was in, the Government has the right to go on at any time, and so I make no suggestion at all. But, if I may, I suggest that it is a rather short time. 4

THE EXAMINER: I suggest that it is a short time; he has not been subpœnaed, I don't think.

Mr. REED: Counsel for Defendant, the Cahill Iron Works, John J. Mahoney and Frank Caldwell, un-

derstands that he will be allowed to cross examine the witness Wayman later on.

Mr. GROSVENOR: I am going to close the case tomorrow with respect to all the defendants.

Mr. REED: That is, counsel understands that he will be given an opportunity to cross examine the witness in accordance with the statement made on the record yesterday, but does not insist that this opportunity be given at all times, or prior to the closing of the Government's case. If necessary, we will recall the witness for the purposes of such cross examination, it being of like effect and so had at this time.

Mr. GROSVENOR: But this is not an agreement with counsel for the Government. Counsel for Government has proven his case and is going to stop his case tomorrow as to all the defendants. Tomorrow will be the fourth day that we have been ready for this cross examination.

Mr. NOBLE: I object to the statement as counsel for Government. Will the Examiner please rule upon the requests which I have made. I renew my protests against the Examiner requiring the cross examination of Mr. Wayman to proceed today, and I ask him if he does require the cross examination to proceed.

THE EXAMINER: The hearing having been adjourned from the 14th of December in Chicago to this place yesterday, for the purpose, as stated in the record, of cross examining Mr. Wayman, I suppose that might be considered the effect of my overruling of the motion of counsel for Defendant for an adjournment.

Mr. NOBLE: Then, I understand that you rule the counsel for Defendants be required to proceed with the cross examination of Mr. Wayman at this time?

THE EXAMINER: I have not so ruled, but I say that might be considered the effect of what I have ruled. I would be disposed to simply overrule the motion for adjournment.

Mr. GROSVENOR: You cannot force him to cross examine the witness, if he does not want to?

THE EXAMINER: I cannot see how I can make Mr. Noble cross examine Mr. Wayman if he does not want to. 1

Mr. NOBLE: I respectfully protest against the action of the Examiner and I state that I waive the cross examination of Mr. Wayman at this time, subject to whatever consideration I am entitled to at law. Now, as to whether we will adjourn until tomorrow to take the testimony of another witness, is your Honor ready to rule on that?

Mr. GROSVENOR: I cannot see why we should not. I see no reason why we cannot meet tomorrow for the examination of another witness. I want to put this witness on tomorrow and close my case and then ask that we adjourn until some particular time when the Defendants will begin their case. If we cannot have that meeting tomorrow, I shall close my case today and ask that we agree upon a time to meet and ask the Defendants to begin their case. 2

THE EXAMINER: It will be entirely convenient to me to adjourn until tomorrow, but I feel that I should consult the convenience of counsel for the Defendants on that point. 3

Mr. GROSVENOR: You mean whether they can be here or not?

Mr. NOBLE: Upon request of counsel for the Government to counsel for the Defendants, to try to make it personally convenient to counsel for Government to be here tomorrow counsel for Defendants agree to do so.

Mr. GROSVENOR: Mr. Wayman may go, if I understand that if he was here tomorrow, your attitude would be the same?

Mr. NOBLE: Yes, except for the examination of one witness which you have to close your case. 4

Mr. GROSVENOR: Yes; and if he does not show up tomorrow, I will close it anyway.

At this point the hearing was adjourned until the following day at 2:30 o'clock p. m.

1 IN THE CIRCUIT COURT OF THE UNITED STATES

FOR THE DISTRICT OF MARYLAND.

THE UNITED STATES OF AMERICA,
Petitioner,

vs.

STANDARD SANITARY MANUFACTURING COMPANY, *et. al.*,
2 Defendants.

Post Office Building,
New York, N. Y., December 22, 1910.

Pursuant to adjournment, the taking of evidence for the Petitioner was resumed in the Post Office Building, New York, N. Y., on the twenty-second day of December, 1910, at 10:30 o'clock a. m.

COUNSEL PRESENT:

3 EDWIN P. GROSVENOR, Esq., Special Assistant to the Attorney-General, for the Petitioner.
HERBERT NOBLE, Esq., on behalf of the Defendants.
ROBERT R. REED, Esq., on behalf of the Cahill Iron Works and Frank H. Caldwell and John H. Mahoney.

FRANK COLLINS, a witness of competent age, produced on behalf of the Petitioner, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. GROSVENOR:

4 Q. Mr. Collins, what is your business?

A. I am Vice-President of the National Supply Company of Toledo, Ohio.

Q. What is the business of that Company?

A. Largely dealing in oil wells supplies and manufacturing some, and partly dealing in plumbing supplies and manufacturing part of them.

Q. In dealing in plumbing supplies, do you handle bathtubs and lavatories and sinks, that is sanitary enameled iron ware? A. We do.

Q. As Vice-President of the Company, are you in active management of that end of the business? A. I am. 1

Q. You are a jobber of such supplies? A. We are.

Q. Are your customers located in other states besides the State of Ohio? A. They are.

Q. That is, your customers who buy sanitary enameled iron ware?

A. Yes, sir; in Ohio, Indiana and Michigan, largely; there are some scattered orders we have from other states.

Q. Do you ship to these customers from Toledo, Ohio?

A. Some from Toledo, and some direct from the manufacturers. 2

Q. In other words, you send the order to the manufacturer and he sends the bill to you? A. Sometimes.

Q. And largely you ship from your storehouse in Toledo? A. Yes, sir.

Q. Previous to June 1, 1910, with what manufacturers of sanitary enameled iron ware did you do business?

A. Largely with the United States Sanitary Manufacturing Company.

Q. Located where?

A. With offices in Pittsburgh, factories in Monaca, Pennsylvania; some business with the Standard Sanitary Manufacturing Company, Pittsburgh, Pennsylvania; some with the Humphryes Manufacturing Company, of Mansfield, Ohio; some with the National Sanitary Manufacturing Company of Salem, Ohio; possibly a little with other manufacturers. 3

Q. You have been subpœnaed here as a witness?

A. I have, else I would not be here.

Q. You have produced certain letters and correspondence. I show you a series of letters with contracts attached and ask you if those were received by your Company from the manufacturers whose names appear thereon? 4

A. Yes.

Mr. GROSVENOR: I will offer this batch in evidence as "Petitioner's Exhibit No. 260."

Papers referred to were then marked and filed as "Petitioner's Exhibit No. 260."

Mr. GROSVENOR: This exhibit consists of various letters, from the following companies, each letter having a contract attached, the contract being a Job-

1 ber's License Agreement similar to Petitioner's Exhibit No. 11; each letter also contains the following sentence: "It is necessary for you to execute these contracts before we can sell you licensed sanitary enameled ware." The letters are from the following companies: The Wheeling Enameled-Iron Company, dated June 6th; The Barnes Manufacturing Company, dated June 4; Cahill Iron Works, June 1; Humphryes Manufacturing Company, June 4; McCrum-Howell Company, May 31; McVay & Walker, June 4; National Sanitary Manufacturing Company,
2 June 6; Standard Sanitary Manufacturing Company, June 4; United States Sanitary Manufacturing Company, May 31, and the Union Sanitary Manufacturing Company, June 6.

Q. Did your company sign any of those contracts?

A. No, sir.

Q. Were you present at any meeting of jobbers and manufacturers of sanitary enameled iron ware in Toledo, in June? A. I was.

Q. What was that a meeting of?

A. A joint meeting of the Eastern Supply Association
3 and the Central Supply Association.

Q. You were President of the Central Supply Association at that time, were you? A. I was.

Q. After the meetings of those associations were concluded, was there any meeting or conference at which the License Agreement or Arrangement, which the several manufacturers had sent out, were discussed?

A. There was.

Q. This was when, in June? Do you remember, approximately?

A. Either the 12th or 13th, I believe.

4 Q. Who was present at that meeting? State the manufacturers present?

A. About 250 people, representing manufacturers in our line of industry.

Q. What manufacturers were present?

THE WITNESS: Manufacturers of—

Mr. GROSVENOR: Manufacturing sanitary enameled iron ware?

A. Well, Mr. Myler and Mr. Torrance and Mr. Ahrens of the Standard Company; Mr. John Wolff, of the L. Wolff Manufacturing Company; Mr. Walter Kohler, of the J. M. Kohler Sons Company; I remember distinctly that those gentlemen were there, and there were five or six others; I think Mr. Brigham was there, representing the Union people of Noblesville. I cannot remember definitely. Also Mr. Cline, I know he was there, of the United States Sanitary Manufacturing Company. 1

Q. Those are all that you recall now?

A. Yes; but I suppose there were quite a number of others. 2

Q. Were speeches made for and against this License Agreement?

Mr. NOBLE: I object to that question. It is immaterial whether speeches were made for or against.

Mr. GROSVENOR: The object of the question is to show, as it stands on the record that some jobbers had signed and some had not signed, that at the time of this meeting the matter was being discussed by the jobbers, and it is the purpose of counsel for the Government in asking the question to show that certain of the Defendants were present and urged the jobbers who had not signed to sign. 3

Mr. NOBLE: I still object on the ground that it is not material. There is no question here what any of these defendants did. The jobbers may have made speeches.

Mr. GROSVENOR: Will you read the question?

The stenographer then read the question.

Mr. NOBLE: I object to the question further unless it is limited to the defendants in this action. It is immaterial on the ground of conspiracy.

Mr. GROSVENOR: Before answering that question, will you look at the list of individual defendants given on page 4, of the Petition and state whether or not any of the individuals there named spoke at that meeting respecting the Jobber's License Agreement or the License arrangement? 4

Mr. NOBLE: What was that question?

The stenographer then read the statement of counsel and question referred to.

1 A. John Wolff of the L. Wolff Manufacturing Company was there and spoke; Mr. Ahrens, ditto; Francis J. Torrance, ditto; A. H. Cline, Jr., of the United States Sanitary Manufacturing Company, ditto. I remember that Kohler was there, but his name is not on this list. He also spoke.

Q. What did Wolff say? State to the best of your recollection?

Mr. NOBLE: I object to the question as it applies to nobody but Mr. Wolff. It is immaterial what he may have said.

2 A. Concisely, that the jobbers had been complaining about the poor state of business generally and particularly the inadequate profits accruing from the handling of enameled iron ware and that the manufacturers through this scheme were now providing a perfectly legal means whereby they could gain a reasonable profit, and he could not understand why there should be any objection on the part of any jobber to joining by executing the contract. Now, I want to qualify that by saying that that may not be the exact language, but that was the gist of quite a long speech made by Mr. Wolff.

3 Q. Did any jobbers reply to that speech?

A. I know I did.

Q. What did you say?

Mr. NOBLE: I object to what Mr. Collins may have said. It is not in any way binding on these Defendants and it has no connection with them. He was not in any conference with them and has no connection with them. He was not in any conference with them and did not speak at their request or with their authority. It is immaterial what he may have said.

Mr. GROSVENOR: Answer the question.

4 A. Approximately, I told them that in my opinion the entire proposition was illegal. They based their claim for legality on the fact that they had had the advise of a bunch of attorneys whom, in their opinion, they considered the most qualified to give an opinion on this subject in the United States; that the said attorneys had many other schemes of this kind now in operation and that they were found to be legal or at least had not been attacked by the Government. In response to that argument—

Mr. GROSVENOR: Excuse me for interrupting you, but will you read that answer so far, Mr. Stenographer? 1

The stenographer then read the answer.

Q. You say "They based their claim"; what do you mean by that?

A. Well, all who spoke, Mr. Torrance or Mr. Ahrens, or anybody who spoke; they all made that statement to me.

Q. Now, go on; what did you say?

A. I told them in my opinion they should not accept any small firm's advice on a subject of so much import, that we had had a similar case in Toledo, and our ice men went to jail on the advice of their attorneys, and our brick and lumber men were all heavily fined, and that I had made up my mind, expert counsel to the contrary notwithstanding, that if they went into this thing, they would all wind up in jail and that I would not have anything to do with it and strongly urged them not to go into it. 2

Q. Did Mr. Kohler take part in the discussion?

A. Yes, sir; I was Chairman of the meeting and I sent for him to have him speak.

Q. What did he say?

Mr. NOBLE: I object to that for the same reason as stated in my objections to the other remarks of Mr. Collins. 3

A. He stated that as far as the J. M. Kohler Sons Company were concerned, they could manufacture the sanitary enameled ware by the process that they had been using which did not contemplate the use of any devices covered by certain patents which, in his opinion, were being used to work out this scheme, and he strongly advised any jobbers against signing the agreement.

Q. Did any of these manufacturers whom you have named speak in reply to Mr. Kohler? 4

A. I think they all took a crack at Mr. Kohler.

Q. Is that all you have to say about that meeting?

A. I can answer any further questions which you may ask.

Q. What did Mr. Torrance say, if anything, about the License Agreement?

A. In substance what Mr. Wolff had said preceding him.

1 Q. Did Mr. Ahrens speak?

A. Yes, sir.

Q. What did he say?

A. Practically the same thing.

Q. And Mr. Cline?

A. I don't recall whether Mr. Cline spoke or not at that meeting.

Q. This meeting was after the License Agreements went into effect?

A. Yes, sir; subsequent to June 6th, you mean?

Mr. GROSVENOR: Yes.

2 THE WITNESS: Yes, sir; it was the 12th or 13th.

Q. Did you personally see any of these manufacturers in regard to the signing of these Agreements at this time in Toledo?

A. I think they all, collectively and individually, saw me.

Q. And asked you to sign the License Agreement?

A. Yes, sir.

Q. Mention the names of those?

A. Mr. Torrance, Mr. Ahrens, Mr. Cline, Mr. Brigham and any others who may have been there, I think.

3 Q. Now, other than the list of manufacturers appearing in the Government's Petition at pages 5 and 6 who are Defendants in this case, what manufacturers of sanitary enameled iron ware are there in the business?

THE WITNESS: Identify them here or answer from memory?

Mr. GROSVENOR: Any way.

A. The Iron City Works; J. M. Kohler Sons Company; Blairsville Enameled Ware Company—your question is who are the other manufacturers than those who asked us

4 to sign?

Q. No, my question is: What manufacturers of sanitary enameled iron ware are there other than the names appearing in the list of Defendants?

A. Louis Lipp of Cincinnati, and there are others, but I don't know them.

Q. You mean there are others named in this Petition on page 10?

A. Yes, but I could not identify them, because I never

did any business or had any acquaintance with Clymer or the other ones. 1

Q. Did you have any conversations with Mr. Torrance subsequent to this Toledo meeting in reference to signing the License Agreement?

A. Yes.

Q. Where was that?

A. I had one conversation with him at Toledo before he left, subsequent to the meeting on the 12th or 13th of June I had another conversation with him—I had three or four with him in Pittsburgh.

Q. In reference to your getting sanitary enameled iron ware? 2

A. Yes, sir.

Q. Did he ask you to sign this agreement?

A. Yes.

Q. And you refused?

A. Yes.

Q. Were you able to get goods from the Kohler Company?

A. No.

Q. Why not?

A. Because Kohler told me he had all the trade he could possibly take care of and was not able to take on an account as large as ours. 3

Q. Weren't you able to get goods from the Iron City Company?

A. No, sir; for the same reason that Kohler gave.

Q. Did you finally get goods from the Standard Sanitary Manufacturing Company?

A. Yes, sir.

Q. State the arrangement? Was it by contract?

A. No, sir.

Q. Was it by oral arrangements?

A. Yes, sir. 4

Q. State what that was?

A. Mr. Torrance in the first place told me at Toledo on my first visit to Pittsburgh that he would make some arrangement whereby we could get our goods. Just how he would fix it he could not say at that time. Later it was arranged—

Mr. NOBLE: I object to the language "it was arranged." It is stating conclusions here not binding

in any way, shape or form, on these Defendants. Just state what was said. I am sure, Mr. Collins, that if you were on the other side you would not want to be bound in such a way.

THE WITNESS: I do not want to do an injustice. Will some one advise me how to answer?

Mr. GROSVENOR: State what he did, or state what he said later, but don't use the word "arranged."

A. Later the goods were shipped to us and charged through their Cleveland branch house.

Q. Without your signing any contract?

A. Without our signing any contract.

Q. What price did you pay?

A. We paid the resale, and 5 or 7½ per cent., whichever it may be; in other words, they billed us the goods in accordance with the prices stipulated in the contract which they had asked us to sign, which was never executed.

Q. I show you a carbon copy of a letter, evidently addressed by you and dated June 28, 1910, to F. J. Torrance, Standard Sanitary Manufacturing Company; will you state if you recall sending such a letter?

A. Yes, sir.

Mr. GROSVENOR: I offer that in evidence as "Petitioner's Exhibit No. 261."

Letter referred to was then marked and filed as "Petitioner's Exhibit No. 261."

Q. Will you look at those letters and identify those (indicating)?

A. Yes, I identify these letters.

Mr. GROSVENOR: This is signed by Francis J. Torrance and is dated July 5, 1910, and this one is addressed to F. J. Torrance and is dated July 1, 1910, it being a letter from the National Supply Company, to which the letter of July 10, was a reply. I offer these letters as "Petitioner's Exhibits Nos. 262 and 263."

Letters referred to were then marked and filed as "Petitioner's Exhibits Nos. 262 and 263" respectively

Mr. GROSVENOR: The letter of June 28, which has been filed as "Petitioner's Exhibit No. 261," reads as follows:

"June 28/1910. 1

"F. J. Torrance, Vice-Pres.,
Standard Sanitary Mfg. Co.,
Pittsburg, Pa.

"Dear Sir:—

"I enclose herewith copy of letter I received yesterday from J. M. Kohler and found on investigation that all of the Jobbers in the City received a like letter.

"This does not look as though you were correctly advised when you told me in confidence on the telephone Saturday that you expected to attend a meeting Monday in Philadelphia and at that meeting both Kohler and Iron City would be reconciled to the new proposition. 2

"This letter was written Saturday as you will note, hence your informant must have been in error.

"I only give you this to show you what we are up against.

"The agent for Kohler is perfectly satisfied to go on selling goods at his price and you will readily realize I cannot do very much if I use the new book.

"We put the new book into force however and are making an effort along that line. 3

"I wired your office today asking whether you would be in Pittsburg tomorrow. If I receive an affirmative response, I shall probably run down to night and go over the details further with you. If not tomorrow, then the day following.

"Yours truly,

"Second Vice-President.

"Dict. F.G.
"Enc." 4

"N.B.—Have just received your response stating Mr. Torrance will be in Pittsburg Thursday. I will therefore be in your City Thursday morning, and will call your office between nine and ten o'clock and arrange for a meeting."

Q. Do you recall having such a conversation with Mr. Torrance over the telephone?

A. Yes, sir.

Q. He was in Pittsburgh?

A. Yes, sir.

Q. Did he state that he was going to Philadelphia?

A. Yes, sir.

Q. Did he state why the Iron City was going to be reconciled?

Objected to.

Q. Is this paragraph which I will read, an accurate summary of the conversation that you had with Mr. Torrance over the telephone (reading): "This does not look as though you were correctly advised when you told me in confidence on the telephone Saturday that you expected to attend a meeting in Philadelphia on Monday and at that meeting both Kohler and Iron City would be reconciled to the new proposition"?

A. If it were not, I would not have written it.

Q. It is then?

A. It is.

Mr. GROSVENOR: The letters filed as "Petitioner's Exhibits Nos. 262 and 263" read as follows:

"July 1/1910.

"F. J. Torrance,
Standard Sanitary Mfg. Co.,
Pittsburg, Pa.

"My dear Frank:—

"Enclosed I hand you our orders #20347, 20348, 20349, 20350, 20351, 20352, 20353, 20354, 20355, 20356, 20357, 20358, 20359, 20360, 20361, 20362, 20363, 20364.

"These are all orders covering goods for which we are compromised; as I explained to you this morning most of them are scattering orders which we have had for some time.

"The large order #20354 is for ware that we will have to deliver as the jobs are ready and for which we quoted prices and are consequently obliged to take care of our customers on same.

"My understanding is that you are to ship all of these orders Tuesday.

"Those coming to Toledo will of course come for-

ward in one car and those going direct to the cus- 1
tomer will of course be shipped by you direct in accordance with the instructions on the face of the order.

"A number of these orders were direct shipments but I thought it would be less expensive for you and barring the handling of the godds, equally as cheap for us to have them come to Toledo, hence with one exception, viz.: #20361, we have changed them to Toledo delivery.

"We have been handling heretofore all of our lavatories with integral soap cup and we prefer those 2
that you ship to be so equipped, instead of your N. P. soap dish.

"Yours truly,

"Dict. F. C. Second Vice-President.
"enc."

"N. B.—As I explained to you this morning, our old price was the supposed carload limit selling price and a confidential 7½%."

"Pittsburg, U. S. A., July 5, 1910. 3

"Mr. Frank Collins,
National Supply Co.,
Toledo, Ohio.

"Dear Sir:—

"Referring to your communication covering orders 20347, etc., would say that as advised you recently, we cannot entertain any orders from jobbing houses who have not become parties to the resale agreement, which has been placed in force for the benfit of the jobber.

"You can, however, purchase the goods through 4
some other jobbing house who has already signed. There are a number of these Houses at Cleveland but none at Toledo. To the best of our knowledge, all the Cleveland Houses have signed the agreement and we would be glad to have this business through the Standard Manufacturing Company of Cleveland. We have presumed to take a memorandum of these orders on the supposition that it will be agreeable

1 to you to buy from there and we have done this to facilitate matters as we understand from your conversation that time is of the essence of the matter to you.

"Yours very truly,

"FJT Francis J. Torrance."

Q. Was Mr. Wayman at any of these meetings at which you and Mr. Torrance discussed whether the Standard should sell you goods? A. Yes, sir.

Q. Did Mr. Torrance suggest that you should see Mr. Wayman about the matter? A. Yes.

2 Q. What did he say?

A. He wanted me to see Mr. Wayman; he thought Mr. Wayman could convince me of the error of my ways, I presume.

Q. What did you do? A. I refused to meet Wayman.

Q. Your dealings were with whom, then?

A. Torrance and Ahrens and one meeting with Mr. Cline; at one of these meetings Mr. Wayman was brought in.

Q. I show you a letter dated September 24, 1910, on the letterhead of Edwin L. Wayman, marked "Personal", and signed "Theo. Ahrens, Presdt.", and ask you if you recall

3 receiving that letter? A. Yes, sir.

Mr. GROSVENOR: I offer that in evidence as "Petitioner's Exhibit No. 264."

Letter referred to was then marked and filed as "Petitioner's Exhibit No. 264."

Q. Before June 1, with which of the two companies had you done the most business, the Standard Sanitary or the United States Sanitary Manufacturing Company?

A. The United States Sanitary Company.

Q. Had Mr. Cline of that Company asked you to sign a

4 contract? A. Yes, sir.

Q. Where was that?

A. At Toledo, the first time, I guess.

Q. And did you refuse?

A. Yes, sir; and later at Pittsburgh.

Q. And did they subsequently refuse to sell you goods unless you would sign? A. Yes.

Q. Since June 1, from which Company have you bought most goods, the Standard or the United States?

A. I think from the Standard Sanitary Manufacturing Company; it has been my aim to do so, at least. 1

Mr. GROSVENOR: Petitioner's Exhibit No. 264 reads as follows: "I promised to write you regarding the difference that exists between us on the charge for drilling special holes in sinks."

Q. What was the difference?

A. The manufacturers adopted as a standard—

Mr. NOBLE: I object to that. State what the difference was.

Mr. GROSVENOR: The witness is coming to that. 2

Mr. NOBLE: The witness is a very intelligent man and can answer that very easily.

Mr. GROSVENOR: What was the question?

The question was then read by the stenographer.

A. I am very much obliged for the compliment, but I cannot answer the question in any other way: The manufacturers had adopted the 8 inch as a standard center to center; that could not be used successfully in Toledo, because in a great many cases we have to put three faucets into the sinks, two for hot and cold soft water and one for public service water— 3

Mr. NOBLE: What has that to do with this case?

Mr. GROSVENOR: I will tell you: Exhibit No. 133 is a price list of Edwin L. Wayman and contains a lot of charges for special drillings, being page 17 of the white pages; these pages apply to all the manufacturers who are licensed with Wayman. That is this book gives not only the price but these special charges.

Mr. NOBLE: Is this testimony being given by counsel? 4

Mr. GROSVENOR: No, I am trying to explain this to you. The statement of the witness will be as to the charges on those special drillings. It is only the carrying out of that one phase of the License Agreement.

THE WITNESS: Will you read my last remark?

The stenographer then read the answer to the question.

1 THE WITNESS (continuing): Now, this cannot be done with the outside faucet less than 10 inches center to center.

BY MR. GROSVENOR:

Q. What is the standard distance?

A. I stated that, 8 inches. I therefore requested them to cast the hole in our sinks where two were cast 10 inches center and where three were cast 5 inches. It was admitted to me by Mr. Torrance and Mr. Ahrens that there would be no extra expense in making them so.

2 MR. NOBLE: I move that the answer be stricken out, especially the latter part as being wholly immaterial.

THE WITNESS: Well, you wanted to know, and that is it.

BY MR. GROSVENOR:

Q. The letter goes on as follows (reading): "I had this matter up with the Commission at a meeting held this week and we went into it at great length. I am now convinced that the charge we make is correct, and that you
3 should pay it, and I want to explain to you the reason why I think so.

The special drilling which the Toledo Trade requires means that all orders for sinks, backs or integral sinks which we receive from you must be put through the works on a special order and must be made separately from the rest. In other words, it is not a regular product, but becomes a special order requiring special attention and extra cost. Any defective or imperfect ware which we might make entails an additional loss as it cannot be used at all but must be "scrapped". Please explain this to the Job-
4 bers in your city, and tell them that there is not intention on our part to be arbitrary or charge them more than what is fair or proper.

While writing on this subject I wish to call your attention to the fact, that when the Agreement was made with you regarding the purchase of Licensed Ware, it was understood that you would confine your business to the Companies that are now licensed. Some business should go to these Companies in order to carry out the arrangement in general. Will you kindly advise Mr. Wayman direct just

what you propose to do in the matter? The U. S. Sanitary Mfg. Co., in particular who were to get part of your business, have received only a few small orders; you should give them some carload specifications, as this was the understanding when the matter was talked over with you. 1

Yours truly,

Theo. Ahrens, Presdt",

Then there is a foot note in handwriting as follows: "You can readily understand that we don't want you to buy elsewhere, unless as in this instance there is a good reason for it. It would not be good policy to cut out U. S. altogether, better give them some and keep them from kicking". 2 Did Mr. Torrance ask you to confine your purchases to the Standard at the time he agreed to let you have goods without signing the contract?

A. No, I offered him that as an inducement.

Q. I show you another letter dated October 6, and signed by Theodore Ahrens and ask you if you received that letter? A. Yes, sir.

Mr. GROSVENOR: I offer the letter of October 6 in evidence as "Petitioner's Exhibit No. 265."

Letter referred to was then marked and filed as "Petitioner's Exhibit No. 265." 3

Q. And the letter signed by F. J. Torrance and dated 9-29-10, and ask you if you remember receiving that letter? A. Yes, sir.

Mr. GROSVENOR: I offer that letter as "Petitioner's Exhibit No. 266." I do not however, offer the letter which appears on the back of Exhibit No. 266.

Letters referred to were then marked and filed as "Petitioner's Exhibits Nos. 265 and 266" respectively.

Mr. GROSVENOR: These exhibits read as follows: 4

"Pittsburg, Pa., Oct. 6, 1910.

"Mr. Frank Collins,
The National Supply Co.,
Toledo, Ohio.

"My dear Collins:

"I have just returned to Pittsburgh this morning, after spending a week in New York and Chicago. I am sorry that I did not have an opportunity to see

you here and will be glad to meet you either Friday or Saturday of this week if you can find it convenient to come to Pittsburgh. I do not believe, however, that the little difference between us as to charge on drilling holes on sink backs is important enough to warrant your coming here.

"We went into this quite thoroughly with the Commission and all of them agreed that the charge was proper and should stand. I hope you can see it in the same light.

"With best wishes, I am,

"Sincerely yours,

"Theo. Ahrens,
President."

"TA

"Pittsburg, U. S. A. 9/29/10.

"National Supply Co.,
Toledo, Ohio.

"Gentlemen:—

"Referring to your letter of the 27th per M. Collins, I don't know how we could locate who is at fault in the matter of the sale to the Monroe Hardware Company unless we knew who the dealer was who sold it. I take it that the Monroe Hardware Company carry on a plumbing business and therefore that some manufacturer sold some dealer, who in turn sold the Monroe people.

"I would like to have this information promptly. I am leaving for New York tonight to attend a meeting of the resale commissioners and on my return will take the matter up with Mr. Wayman.

"I note your letter to Mr. Ahrens stating that you will be here about the 4th of the month. To the best of my knowledge, both of us will be here and glad to see you.

"Yours very truly,

"F. J. Torrance,
V. P."

"FJT

Q. I show you a letter signed by E. L. Wayman, and dated August 24, 1910, and ask you if you received that letter? A. I did not.

Q. Did your Company?

A. I take it that we did, because I took it from my file. I was absent from Toledo from the 20th of August until the 12th or 13th of September. 1

Q. It is produced from your files, is it? A. Yes, sir.

Mr. GROSVENOR: I offer that letter as "Petitioner's Exhibit No. 267."

Letter referred to was then marked and filed as "Petitioner's Exhibit No. 267."

Mr. GROSVENOR: That letter reads as follows:

"Aug. 24, 1910.

"Mr. Frank Collins,
c/o National Supply Co.,
Toledo, Ohio. 2

"Dear Sir:—

"I am informed that your Company is selling Enameled Ware throughout Michigan at prices below those established on Licensed Ware. At your convenience will you be kind enough to let me hear from you regarding the matter so that I can reply to the party making the complaint.

"Yours very truly,

"E. L. Wayman." 3

Q. I show you a letter dated June 1, 1910, and signed "A. H. Cline, Jr." and addressed to your Company, and I ask you if that is a letter which was received by your Company? A. Yes, sir.

Mr. GROSVENOR: I offer that letter in evidence as "Petitioner's Exhibit No. 268."

Letter referred to was then marked and filed as "Petitioner's Exhibit No. 268."

Mr. GROSVENOR: This letter, Petitioner's Exhibit No. 268, reads as follows: 4

"Pittsburg, Pa., June 1, 1910.

"The National Supply Co.,
Toledo, Ohio.

"Gentlemen:—

"In reply to your favor of the 31st ult., by Mr. Frank Collins in reference to the price quoted by the Pittsburg Supply Co., to the Justice Plumbing Co., Massilon, Ohio, beg to state that the writer has just

taken this matter up with Mr. Lamberger, Manager of the Pittsburg Supply Co., and he states that they positively have not made Mr. Justice any quotation from their office in over two months. He also states that they are not doing any business with Mr. Justice, owing to a little misunderstanding that they have had with him. He does state, however, that their salesman was there recently but does not know of any quotation that their salesman made, as he had no authority to make a quotation of the prices as given in your letter. This could not have been the Pittsburg Gage & Supply Co. as these people do not handle enameled ironware, so that either your salesman has gotten the name of the firm wrong or else the quotation is wrong. However, this price cutting cannot keep up over the end of this week, as the new prices will go into effect on next Monday and this will take care of just such situations as this. Thanking you for taking the matter up with the writer, beg to remain,

"Yours very truly,
"United States Sanitary Mfg. Co.,
"A. H. Cline, Jr.,
"AHC-R. Secretary."

Mr. NOBLE: I object to that letter on the ground that it is immaterial, incompetent and irrelevant and has nothing to do with the allegations in this case.

Q. I show you two letters dated June 7 and June 13, both signed by A. H. Cline, Jr., and ask you if you received those letters? A. Yes, sir.

Mr. GROSVENOR: In reply to your objections, I want to state that is offered as being an admission on the part of the United States Sanitary Company that new prices were going into effect and that these prices and the new arrangement would prevent price cutting on these plumbing supplies to customers. I now offer these two letters which have just been identified as "Petitioner's Exhibits Nos. 269 and 270."

Letters referred to were then marked and filed as "Petitioner's Exhibits Nos. 269 and 270" respectively.

Mr. GROSVENOR: Those letters read as follows:

"Pittsburg, Pa., June 7, 1910. 1

"The National Supply Company,
Toledo, Ohio.

"Gentlemen:—

"We have your orders #18444, #18363 and #18457 received in this mornings mail, but as we have not as yet received your signed license contract, and as our contract with Mr. E. L. Wayman the Licensor, positively prohibits our accepting any orders or executing same after the 6th day of June, except with the jobbers who have signed the license 2
contract, we are unable to execute these orders until we receive your signed contract. We are sorry to have to take this action but we have no alternative whatever in the matter as our contract positively states what we are allowed to do and explicitly prohibits our accepting any orders from jobbers who have not signed the license contract. So we would kindly ask you to let us have this signed contract as early as possible in order not to delay any of your shipments.

"Yours very truly, 3
"United States Sanitary Mfg. Co.,
"A. H. Cline, Jr.,
"AHC-R. Secretary."

"Pittsburg, Pa., June 13, 1910.

"Mr. Frank Collins,
c/o National Supply Co.,
Toledo, Ohio.

"Dear Sir:—

"We have your favor of the 11th in reference to orders that you are sending us, which you ask us to 4
execute before you sign your resale contract, and in reply as stated in our former letter, we have no alternative or discretion whatever in the matter, as we have positively signed up under the agreements with Mr. Wayman that we would not accept orders from any jobber who had not signed the resale contract.

"The writer will be very glad to see you in Toledo tomorrow and talk the matter over with you. In the

meantime, we positively must hold up all orders, that have come in since June 6th from you.

"Yours very truly,

"United States Sanitary Mfg. Co.,

"A. H. Cline, Jr.,

"AHC-R. Secretary."

Q. Did you get any of those goods from the United States Sanitary Manufacturing Company at this time?

A. I cannot state definitely; some orders were filled by switching the numbers to back orders and some were cancelled.

Q. This letter, Exhibit No. 270, refers to the date for this Toledo meeting about which you testified? A. Yes, sir.

Q. Will you identify this letter from the Cahill Iron Works, dated June 10, 1910, and addressed to your Company? A. Yes, sir; I identify it.

Mr. GROSVENOR: I offer that in evidence as "Petitioner's Exhibit No. 271."

Letter referred to was then marked and filed as "Petitioner's Exhibit No. 271."

Mr. GROSVENOR: I will read that letter (reading):

"Chattanooga, Tenn., U. S. A.,
June 10, 1910.

"The National Supply Co.,
Toledo, Ohio.

"Gentlemen:—

"We are in receipt of your valued order of the 8th, No. 18624, and beg to thank you for same. You were advised some time ago by E. L. Wayman, Licensor, that new prices would be effective June 6th, and as your order did not reach us until June 10th, we have no choice whatever in the matter, but will be compelled to invoice same at new prices. These prices have doubtless reached you by this time, and we trust that the above will be satisfactory.

"In order to get the benefit of discounts from the resale prices, it will be necessary for you to return the contract which we mailed you on the 4th, properly signed, and, if you have not already done so, we would ask that you sign same and return to us with your reply.

"Again thanking you for the order, and awaiting your reply, we are, yours truly, 1
"HWP/W The Cahill Iron Works."

Q. Will you identify this letter of July 7, addressed to you and signed by F. H. Caldwell, President, and this letter of July 9th, being a carbon copy of what appears to be a letter addressed by you to the Cahill Iron Works, dated July 9th, and Mr. Caldwell's reply to your letter, dated July 11? A. Yes, sir; I identify those.

Mr. GROSVENOR: I offer these letters in evidence as "Petitioner's Exhibits Nos. 272, 273 and 274." 2

Letters referred to were then marked and filed as "Petitioner's Exhibits Nos. 272, 273 and 274," respectively.

Mr. GROSVENOR: Those letters read as follows:

"Chattanooga, Tenn., U. S. A.,
July 7, 1910.

"Mr. Frank Collins,
National Supply Co.,
Toledo, O.

"Dear Sir:— 3

"Yours to hand. Am sure you know me well enough to be sure I do not want to be arbitrary or unfair; also that I want all the business I can get.

"This resale license arrangement is not of our making, and we were the last manufacturer to go into it. Our position was simply this: We have a very satisfactory electric dredger, for which we have patents applied for. The owner of the Arrott Patent contends that if our claims are all allowed we will still infringe on their patent. They have been through the Courts three times, as high as the Circuit Court of Appeals, and have won every time. It was, therefore, up to us to take the license or give up our dredger, or stand a law suit. 4

"Kohler claims he can make the goods the old way; we know we cannot, and if we were to fight the suit and lose the results would be very disastrous to us. I went to New York and consulted the best legal talent I could find. My brother has been Practicing law in New York for twenty-five years, and Edison's

1 Chief Attorney, who, perhaps is one of the best patent attorneys in the country, is a warm personal friend of his. They went over the matter together and said that the U. S. Circuit Court of Appeals had pronounced similar cases legal, and until the Supreme Court decided differently it was surely the Law of the land.

"Not making tubs or a complete line, it surely was not up to us to fight it, and you can readily see our position. Having accepted a License there is nothing for us to do but to carry it out. Another
2 point I should mention. Cases of this kind, where patents are involved, do not come within the province of the State Courts, but must be tried in U. S. Courts.

"I am going to order the goods shipped as requested, as I have no desire to embarrass you in any manner whatever, but I will rely on your sense of fairness, etc., not to mention it, but to keep the matter confidential, as I am disobeying the instructions of the Licensor, and am subjecting myself to penalties if he felt disposed to impose them.

3 "I am free to confess that when the matter was first presented to me it looked very different from what it does now from a legal standpoint. I understand that three fourths or more of the jobbers have signed the agreement, and it does not seem to me that you would be assuming any risk, provided you want to sell the licensed ware.

"If you prefer not, you can readily understand, having signed the license, I must follow instructions, and I am sure you will not feel hard towards me when you get this explanation of our position. Of
4 course if you do not intend to sell licensed enamel ware it would be advisable to tell your men not to take orders for our goods.

"Trusting you will consider this letter strictly personal and confidential, I am,

"Yours truly,

"FHC-C Frank H. Caldwell, Prest."

"P. S. In regard to Arrott Patent, I understand the most of the manufacturers have been paying

royalties so much a furnace. We have had notice for sometime past that we would be held liable for infringement." 1

"July 9/1910

"Cahill Iron Works,
F. H. Caldwell, Pres.,
Chattanooga, Tenn.

"Gentlemen:—

"I beg to acknowledge your personal letter of the 7th and will treat same confidential as requested, and would ask that you kindly do likewise with reference to this communication. 2

"I want to outline to you our position in this matter, as I have tried to make it plain to various other people interested in this scheme—

"Now in the first place the National Supply Co. have 75 or 80 Branch Stores, the number varying from time to time, due to the activity in various parts of the country in the Oil Industry.

"We have a good many stores in such States as California, Texas, Oklahoma, Kansas, Illinois, and Indian Territory, in all of which Communities there has been more or less legislation of an adverse nature to large Companies enacted, due to the sentiment that prevails through the West in general. 3

"We are loathe to enter into any price agreement or any scheme of any kind that might be considered as being in restraint of trade, regardless of any opinion that might be given us by any attorney, that such scheme was legal due to the basis of it being that of a patent right.

I believe that this is exactly the position taken by Crane who like us has a great many branch stores.

Now we will be very glad to co-operate with those interested as far as possible provided such co-operation does not in any sense make us liable under existing Laws, but like Crane we will not sign this agreement. 4

"I am credibly informed and I believe you know that I am correct when I say that you have no contract with the Crane Co. other than a verbal understanding which you may have had, and further-

more they are permitted to buy from whom and at what price they choose.

"We probably are not quite as large factors in the plumbing line as they are, but we certainly pay our bills as promptly and are in our own opinion at least, entitled to the same consideration that they are.

"We think Crane's position is absolutely the correct one and we will go just as far as they do and no further.

"We do not believe for one moment that it is other than an injustice to us to ask us to concede anything that has not and will not be considered by Crane, and I would like an expression from you along these lines as to what your opinion is of our position, as outlined in the above.

"I beg to state that I have only the highest personal regard for your own good self and while this entire proposition may be all right, we do not want to be dragged into a scheme which in our opinion is at least questionable, if not illegal, as it might reflect seriously were we to be brought to task in some of the Western States, due to our large operations and consequent feeling that exists through the Middle West with reference to big concerns who do Interstate business.

"I should be very glad to hear from you further on this subject, and assuring you that anything we can do to better conditions, we will do provided same is legal, I beg to remain,

"Yours truly,

"Dict. F.C. Second Vice-President."

"Chattanooga, Tenn., U. S. A.
"July 11, 1910.

"Mr. Frank Collins,
National Supply Co.,
Toledo, O.

"Dear Sir:—

"Answering your favor of July 9th, would say that we are a very small factor in this arrangement, and in order to get any change in the agreement it is

necessary to take the matter up with Mr. Wayman, and let him work it out. 1

"Would state that I have always been on very friendly terms with you personally, and no matter what happens in business matters, I hope these relations will always continue. I have often gone over the question of inspection with you, and our people (particularly our General Manager, Mr. Mahoney) have always said that your business on this account was always unprofitable. There would actually be more rejections and returned goods in one car for you than in seven or eight cars, say, to Crane Company. This may seem incredible to you, but we keep a strict account of all returned goods, and can assure you that this is correct. So, you see we could not afford to take all your business if you would give it to us. 2

"I want to treat everyone right under any and all conditions, and it appeared to me that it was only fair to fill these orders already taken by you, but I trust you will instruct your men not to take orders for our goods until you can come to some understanding with Mr. Wayman, under whose instructions we are operating at this time. Should you make these satisfactory arrangements, and would care to handle any of our special goods we will try to please you, but your inspection, to our mind, is so severe that we do not care for the trade on the general line of goods in our line. 3

"Trusting this will find you in good health, and with best regards, I am,

"Yours truly,

"F. H. Caldwell,

"FHC-C President." 4

Mr. REED: Please note that it is agreed that counsel for the Cahill Iron Works shall have the right to enter any objections or exceptions to the testimony at some future time, after having had opportunity to read over the testimony.

Mr. GROSVENOR: I limit my consent to a reasonable time because this record is going to the printer very shortly, and I expect to have it put in type

within a few days, so counsel for the Defendants should enter their objections within a reasonable time from this date.

CROSS EXAMINATION BY Mr. NOBLE:

Q. Mr. Collins, are these letters which counsel for the Government has been examining here from your file?

A. Yes, sir.

Q. Have you any objection to my seeing the letters from your files that passed between you and Mr. Wayman?

THE WITNESS: Me and Mr. Wayman?

Mr. NOBLE: Yes.

A. No, I have no objections. I do not think that I ever wrote Mr. Wayman a letter that I know of in my life. He has written some to me, however.

Q. Will you kindly let me have those letters?

A. Here they are (handing same to counsel).

Q. What was the date of your talk with Mr. Torrance at which he said he would try to arrange for you to purchase licensed sanitary enameled iron ware from the Standard Sanitary Manufacturing Company?

A. I cannot remember.

Q. Approximately?

A. Approximately between June 10, and July 1.

Q. Did he tell you with whom he would have to talk in order to make the arrangements? A. Yes.

Q. With whom did he say?

A. That he would have to fix it with Wayman.

Q. Have to get Mr. Wayman's consent?

A. That he would have to fix it with Wayman.

Q. In other words, make some arrangement whereby you could buy licensed sanitary enameled ware?

A. I presume that is what he meant, I don't know.

Q. What did you want to do, buy those goods?

A. Yes, sir.

Q. And did he afterwards sell you licensed sanitary enameled iron ware? A. Yes, sir.

Q. Was there any exchange of letters between you on the subject? A. There is considerable in the files.

Mr. GROSVENOR: Between whom was that correspondence?

THE WITNESS: Between Mr. Torrance and myself.

Q. Is there any of that correspondence which relates to the fact that Mr. Torrance or somebody in the Standard Sanitary Manufacturing Company had made an arrangement with Mr. Wayman or fixed it with Mr. Wayman in some way so that you could get licensed sanitary enameled ware? A. Not that I can recall. 1

Q. May I look at the file?

A. Here it is (indicating); I am sure there is nothing on the file.

Q. After you had had this conversation with Mr. Torrance in which he had said to you that he would try to fix it so that you could purchase Standard sanitary licensed ware, did you thereafter have any conversations with other licensed manufacturers? A. Mr. Cline and— 2

Q. And did you make a similar arrangement with him?

A. No.

Q. Did you ask Mr. Cline to try to sell you licensed sanitary enameled ware? A. I did.

Q. What did Mr. Cline say?

A. Not unless I signed this agreement.

Q. Did Mr. Cline say that he would try to get Mr. Wayman to effect this arrangement with you?

A. I did not want him to or ask him. 3

Q. Did you talk with any other manufacturers in respect to the matter? A. No.

Q. Did you have any correspondence with any other manufacturers with respect to the matter?

THE WITNESS: You mean as to licensed ware?

MR. NOBLE: Yes, licensed ware.

A. No, I think we had some orders with the Cahill Iron Works, which they refused to ship, and we may have had some correspondence with them.

Q. What was the date of your telephone talk with Mr. Wayman? 4

THE WITNESS: What talk?

MR. NOBLE: Wherein you agreed to buy licensed enameled ware and agreed to be bound.

A. I don't remember it.

Q. You do not mean to say that you did not have a talk with Mr. Wayman and agreed to maintain the conditions and provisions of the agreement?

1 A. I did not; Mr. Wayman pestered me to death, but he never got me to agree to it.

Q. You agreed over the telephone to do it, though, didn't you? A. I just said no.

Q. You say you did not? A. I did not.

Q. Did you have a telephone talk with Mr. Wayman?

A. He called me at least a dozen times.

Q. Did you have a telephone talk with him on that subject?

A. He may have asked me, but I do not recall it.

Q. Do you remember having a telephone talk with him
2 about the 5th of July? A. No, sir; I do not.

Q. You do not remember telling Mr. Torrance that you had that talk with Mr. Wayman and he had given you licensed—

A. (Interrupting): No, sir; and I will say that that never did occur.

Q. You have no recollection of telling anybody else that?

A. No.

Q. You did maintain the prices, however, didn't you?

A. Possibly; in some cases we charged more and in some cases less.

3 Q. You sold the goods that you got from the Standard Sanitary Manufacturing Company in accordance with price book? A. Sometimes; yes, sir.

Q. Didn't you tell Mr. Torrance that you would maintain those prices?

A. He asked me to and I said that no jobber could sell them for less money than indicated in the price book and that in a great many cases we would probably charge more, but I would not go on record to do so, and that he would have to take us on sufferance.

Q. You mean that you would not write the letter but
4 you told him orally that you would maintain the prices, didn't you? A. I told him what I just told you.

Q. Tell it to us again.

THE WITNESS: I suppose you think I cannot tell the truth twice alike?

Mr. NOBLE: No, Mr. Collins, you used the words, "Go on record"; that usually means on paper; I want to know what you said as well as you remember it.

A. I cannot remember the exact words I used sixty days hence. 1

Q. I want you to tell us to the best of your recollection what words you used?

THE WITNESS: Then, you want the substance.

Mr. NOBLE: No, I want your best recollection.

THE WITNESS: I can only give the substance and tell the truth.

Mr. NOBLE: Give your best recollection of your conversation with Mr. Torrance when you discussed getting licensed ware and selling it in accordance with the resale price list which is Exhibit No. 41? 2

A. I told Mr. Torrance that I did not see how it were possible for us or anyone else to sell the licensed ware at any less money than was outlined in his price book and that in all probability in a great many cases we would charge more; that I would not go on record, either verbally or otherwise, and agree to charge those prices and that he would have to take us on sufferance.

Q. That was after Mr. Torrance had tried to arrange it or fix it with Wayman so you could get licensed goods?

A. It was part of half a dozen conversations which took place. 3

Q. Now, how did you happen to write to Mr. Wayman? Here are some letters from the National Supply Company?

A. That occurred in my absence. If I had been there, there would have been no letters written to him.

Q. Why did your firm write to Mr. Wayman?

A. I don't know why they did.

Q. You do not think they had any relations with him?

A. None whatsoever; we were almost pushed to Mr. Wayman by the various manufacturers, who instead of answering our letters said those letters would be answered by Mr. Wayman, but we never wrote to Mr. Wayman, to my knowledge. 4

Q. I find in this file which you have allowed me to look at, a letter dated July 29, 1910, it being a letter addressed by the National Supply Company to Mr. Wayman; also a letter addressed by Mr. Wayman to the National Supply Company under date of August 24, on which there is a pencil mark, "F. Collins"; that is your name, is it not?

A. It is.

Q. Is that your handwriting?

A. No, sir; that means that the boy who opened the mail referred it to me.

Q. Here is a letter of August 26th from the National Supply Company to Mr. Wayman; a letter of August 25 from the National Supply Company to Mr. Wayman; a letter of September 3, written by Mr. Wayman to the National Supply Company, and a letter dated September 1, 1910, to Mr. H. S. Gardiner, care of the National Supply Company, written by Mr. Wayman; a letter of September 7, from Mr. Wayman to the National Supply Company; in answer to the letter of the 2nd of September from the National Supply Company to Edwin L. Wayman; a letter dated September 8, 1910, to the National Supply Company from Mr. Wayman; the last mentioned being a copy; these letters are produced from your files, are they not?

A. Yes, sir.

Mr. GROSVENOR: I will offer those letters in evidence that have just been referred to by counsel for the Defendants, as "Petitioner's Exhibit No. 275."

Letters referred to were then marked and filed as "Petitioner's Exhibit No. 275."

By Mr. NOBLE:

Q. You did make the agreement to which you have referred, through the instrumentality of Mr. Torrance—by the way, did you state what the date of that agreement was?

A. You cannot get me to say that I made an agreement, because I did not. What is the use of referring to an agreement that does not exist.

Q. You asked Mr. Torrance to try to sell you sanitary enameled iron ware, didn't you?

A. Yes.

Q. And he said he would try to fix it with Wayman?

A. Yes, sir.

Q. And thereafter you were able to obtain sanitary enameled iron ware from the Standard Manufacturing Company?

A. Yes, sir.

Q. You had several conversations that brought about that result?

A. Yes, sir.

Q. Now, let us assume, just for the sake of argument that that was an agreement; you need not say that it is an agreement, but between what dates did you arrive at that concrete result? 1

A. I cannot tell you.

Q. Was it—

A. (Interrupting): Along in July or August; I am just guessing at that; there is so much which transpired.

Q. Somewhere about the middle of July, wasn't it?

A. I cannot say, but somewheres in July or August.

Q. Subsequent to that time, did you get licensed sanitary ware from any of the other licensed manufacturers? 2

A. United States shipped some ware; in fact, they began to solicit us, and I think we had some ware from the Cahill Company; Cahill wrote us and said that they understood we were to be sold enameled ware, or else they sent a representative there to see us.

Q. How many of the other licensed manufacturers sent you representatives or solicited your orders?

THE WITNESS: After that time?

Mr. NOBLE: Yes, after this concrete result was obtained after your conversations with Mr. Wayman? 3

A. I did not obtain any arrangement with Mr. Wayman that I know of; put that in the record.

Mr. NOBLE: I said concrete result.

THE WITNESS: But you emphasized it. I presume I was called on by two or three others.

Q. And did they all assume that you had the right to purchase licensed enameled iron ware?

A. Yes, sir; and I let them assume it.

Q. Did they tell you who had informed them?

A. No, sir. 4

Q. Didn't they tell you that Mr. Wayman had notified them that you had the right to purchase sanitary enameled iron ware?

A. No, sir.

Q. You do not recall any letters which you saw saying that they had been informed by Mr. Wayman that you had a right to purchase their ware?

A. They sent their various emissaries who wanted to

1 sell us, and to some I said that I was very glad to know it and to others I said that I did not know anything about it.

Q. Did you tell them how you reached this concrete result which has been described?

THE WITNESS: Which you have described.

Mr. NOBLE: Either one.

A. No.

Q. Did you talk to Mr. Wayman about that over the telephone?

A. I did not talk to Mr. Wayman about that matter at
2 all; make a note of that.

Q. Did you talk to Mr. Wayman about the concrete result which had been arrived at through Mr. Torrance?

A. I did not; no, sir.

Q. Did you talk to him about selling licensed enameled ware?

A. I did.

Q. What was the substance of that conversation, that is subsequent to the talk with Mr. Torrance?

A. He called me about two or three weeks ago and asked me about a certain matter about a guarantee on tubs, and I
3 told him I had made everything plain to Mr. Ahrens, whom I had discussed the matter with in Chicago, and that I could not say anything further to him. In other words, I, as far as possible, in every way, shape or form, avoided Mr. Wayman either by telephone or by correspondence, because I was afraid if I had anything to do with him about this proposition, that he would get me in trouble—

Mr. NOBLE (Interrupting): I move that that answer be stricken out. I move that the latter part of the answer be stricken out as being immaterial and irrelevant and not responsive to the question.

4

Q. I asked you if you had any conversation with Mr. Wayman subsequent to your talk with Mr. Torrance about the licensed sanitary enameled ware?

A. It is all down there; you can take your pick.

Mr. NOBLE: Put that all down and note the question which I asked the witness.

THE WITNESS: You can pick it all out, if you wish. I have some right, I think.

Q. When were you subpœnaed to come here? 1

A. Saturday.

Q. When were you served with that subpœna?

A. Saturday.

Q. You were subpœnaed to be here Saturday?

A. No, Monday, and I asked that it be put off because I could not get here without irreparable damage to the witness.

Q. Before coming here had you shown any one representing the Government these letters (indicating)?

A. I had not.

Q. Had you told anybody about the arrangement which 2
you had made through Mr. Torrance and which you described a while ago?

A. No, sir; I told nobody, because it was a confidential matter and I disliked to describe it here.

Q. When you say that you spoke to Mr. Ahrens about some guarantee about tubs, you wanted Mr. Wayman to find out from Mr. Ahrens what you had said to him?

A. Yes.

Q. What had you said to Mr. Ahrens?

A. I said that in my opinion he could not market the tubs unless it carried a full guarantee and Mr. Ahrens had 3
to get, or thought he had to get that permission from Mr. Wayman. Mr. Wayman then called me up and I referred him back to Mr. Ahrens, as he was in a position to give him all the information.

Q. Did Mr. Torrance tell you that after he was able to fix this matter with Mr. Wayman that you would have to adhere to the terms of the Jobber's License Agreement?

A. No, he did not; because no one can dictate to me what I should do in the conduct of my business; he probably requested that—

Q. With all apologizes to the touchy witness, I will 4
change the language and say, "Did he request you"?

Mr. GROSVENOR: I object to that language. The witness is to answer all questions.

THE WITNESS: If I cannot amplify my answer, I will refuse to answer the questions.

Q. Did Mr. Torrance say or suggest that if he was able to fix the matter with Mr. Wayman he would expect you to maintain the part and parcel of the agreement?

son that the record, according to my recollection, does not show anything like that. Nothing was said in my questions to the witness about fixing it with Mr. Wayman.

THE WITNESS: That is the part that is wrong in that question.

The stenographer then read the question.

THE WITNESS: I said if he fixed it.

Q. Then, you said if Mr. Torrance fixed it so you could get licensed sanitary ware from the Standard Sanitary Manufacturing Company that you would, as an inducement for his so fixing it, be willing to buy all your goods from the Standard Company?

A. Yes.

Q. And Mr. Torrance said, "Well, I will try to fix it" or "have it fixed with Mr. Wayman"; of course, I do not pretend to quote his words, but words to that effect?

A. He said he would have to fix it. I did not know whether he would have to fix it with Wayman or not, but I assume that he did.

Q. Now, in a letter signed "F. C.", is that you—

A. Yes.

Q. And addressed to the Standard Sanitary Manufacturing Company, under date of July 16, 1910, there appears this sentence: "Mr. Wayman said he saw no reason why, inasmuch as we ordered all our sinks and sink backs that way and were willing to order 12 to 50 pieces at a time of the staple sizes, that this exorbitant overcharge for special drilling should not be waived in our case. He said he would talk to you about the matter and that I would hear from you but I have not to date." That has reference to this same drilling question which you were explaining awhile ago to counsel for Government; with whom was that conversation?

A. That conversation was held in Mr. Torrance's office and they brought Mr. Wayman over there.

Q. And the conversation was had between you, Mr. Torrance and Mr. Wayman?

A. No, the conversation was had between me and Mr. Ahrens, with Mr. Wayman as an auditor; he listened to what was gone. When it was through he made that remark to Ahrens, I did not ask him to make it.

Q. It was made in your presence about a subject matter which you were endeavoring to bring about? 1

A. Thrashed out with Mr. Ahrens, yes.

Q. And you again bring it to the attention of the Standard Company, because at that conversation Mr. Wayman said, as you quote him here, "he saw no reason why inasmuch as we ordered all our sinks and sink backs that way * * * this exorbitant overcharge on special drillings should not be waived in our case." That is the reason you brought it to his attention, is it not?

A. No, because in a latter telephone conversation I had with Mr. Ahrens, he had told me that he had agreed with me 2 that would not be a good honest charge, and in our case it would not be eliminated, but he would have to get Wayman's permission before he, Torrance, could do it.

Q. And you understood that—

A. That is good English.

Q. And it was for the purpose of getting Wayman's permission, as I understand you, that Wayman was brought into the room at the time of this talk?

A. Wayman was brought in without my knowledge. If I had known that he was to be there, I would not have been there. 3

Q. Well, was that ever done?

A. It was never done.

Mr. GROSVENOR: Are you referring to the same matter now as is referred to in Exhibit No. 264?

THE WITNESS: Yes, sir.

Mr. GROSVENOR: I will offer this letter (indicating) now as "Petitioner's Exhibit No. 276."

Letter referred to was then marked and filed as "Petitioner's Exhibit No. 276."

Mr. GROSVENOR: This letter reads as follows: 4

"July 16/1910.

"Standard Sanitary Mfg. Co.,
F. J. Torrance, Vice-Pres.,
Pittsburg, Pa.

"Dear Sir:—

"If you will remember when I was in your office last we discussed the matter of 10" centers on our sinks and sink backs.

"We must have this drilling in this territory due to to the fact that it has become standard and this standard was put in force on account of probably half the sinks having three cock holes.

"You can put three cock holes in a sink 4" centers, but 5" center to center makes the best arrangement, therefore when only two cocks are used our Trade all want 10" centers.

"Mr. Wayman said he saw no reason why, inasmuch as we ordered all our sinks and sink backs that way and were willing to order 12 to 50 pieces at a time of the staple sizes, that this exorbitant overcharge for special drilling should not be waived in our case. He said he would talk to you about the matter and that I would hear from you but I have not to date. Will you kindly advise?

"Yours truly,

"Dict. F.C. F.C."

THE WITNESS: You know, every way we turned, we ran against Mr. Wayman. We could not get away from him.

Q. Mr. Collins, following your talk with Mr. Torrance, which we have had fully described heretofore, and in which you asked him to sell you licensed ware, and in which he said he would try to fix it so that he could do it, or whatever his language was, which you have used, did you give instructions to your salesmen not to sell any goods below the prices in the price list?

A. No, I don't think we gave them any definite—we probably gave them our usual bulletin—the Company would buy those goods and tell him that was our limit price without conferring with the office.

Q. I will read you this sentence contained in a letter dated September 13, in which you, among other things, say: "Owing to the prices we are obliged to pay you for enameled ware we cannot see our way clear to make a profit at anything below your resale price, and as a consequence, I have instructed all our salesmen that we would accept no business on enameled ware of anything lower than this resale price." Does that correctly summarize the instructions which you gave to your selling agents?

A. Accept that they were not permitted to sell less than

that price, but in some cases, we had prices higher than that and if they wanted to go lower than that they had to get my personal permission. 1

Q. Then, the sentence substantially summarizes your instructions?

A. Yes, sir.

Q. In your letter of September 13, 1910, addressed to Mr. Torrance, there occurs this sentence, all relative to this sink drilling: "You practically agreed with me on this and said that you thought this could be adjusted without any difficulty, to take care of our requirements in this territory, that you would take the matter up and the third party who was present, also stated that in his opinion special dispensation could be given us." Who was that third party? 2

A. Wayman, that is the conversation that I spoke of before.

Q. The subject matter of the conversation was all this same drilling that you told counsel for Government about, is that right?

A. Yes, sir.

Mr. GROSVENOR: I will offer that letter as "Petitioner's Exhibit No. 277."

Letter referred to was then marked and filed as "Petitioner's Exhibit No. 277." 3

Mr. GROSVENOR: That letter reads as follows:

"Sept. 13/1910.

"F. J. Torrance, 1st Vice Pres.,
Standard Sanitary Mfg. Co.,
Pittsburg, Pa.

"Dear Sir:—

"I find on my return considerable correspondence with reference to sink drilling. Don't you remember a conversation that I had in your office wherein this very matter was raised and I fully explained to you the difficulty we had on account of so much soft water being used through this territory, which had made it necessary for a great many sinks to be drilled for three cocks and as a consequence had established a 10" center to center where drilled for two cocks and a 5" center to center where drilled for three cocks. 4

"Now of course I realize that where the third cock

1 hole is cast a reasonable charge should be made, but I do not believe there is any reason for making a charge for the different spacing.

"You practically agreed with me on this and said that you thought this could be adjusted without any difficulty, to take care of our requirements in this territory, that you would take the matter up and the third party who was present, also stated that in his opinion special dispensation could be given us.

"We do not order these sinks one at a time but order good fair-sized quantities and they can be run
2 through the shop it seems to us in lots without any additional expense whatever.

"When you telephone me to-morrow, please collect your data on this subject also and let me hear from you, as we are in need of sink backs on our orders placed with you and also some one piece sinks.

"Yours truly,

"THE NATIONAL SUPPLY CO.,

"F. C.

"Dict. F.C. Second Vice-President."

3 Q. In a letter dated July 5th, and addressed to the Standard Sanitary Manufacturing Company you say: "In addition to the orders I sent you Friday afternoon the following are on our books, according to our records"; then follows a list of orders for sanitary enameled iron ware?

THE WITNESS: Is that the United States or the Standard?

Mr. NOBLE: The Standard?

A. Yes, sir.

Q. Did you afterwards get those goods?

A. I presume so. The Standard has not refused to ship
4 us any goods.

RE-DIRECT EXAMINATION BY Mr. GROSVENOR:

Q. Mr. Collins you have testified that you have been buying goods from the Standard Sanitary Manufacturing Company since June 1st. I show you a Jobber's License Agreement which is Exhibit No. 11 and I direct your attention to the first page of that Exhibit. Will you state whether you have been allowed the discounts given on that page?

A. We have.

Q. By the Standard? A. Yes, sir. 1

Q. Now, turning to the second page of the exhibit and directing your attention to Paragraph 7 headed "Rebates", that states: "If all the conditions of this agreement have been complied with and you have confined your purchases to the licensed manufacturers, we will pay you rebates on such purchases as you have made from us as follows", and then following that is a table of discounts or rebates; have you been allowed those rebates? A. No, sir.

Q. I direct your attention to Paragraph 8 of the exhibit which reads: "If your purchases of material, less returned goods, covered by the various schedules from the 2
following manufacturers licensed under the patents herein enumerated before"—then follows a list of the sixteen defendants—"have aggregated sums as follows and if all the conditions of this agreement have been complied with the company will pay the purchaser rebates on such purchases as they have made from the company during the period ending December 31, 1910, as follows:" then follows a list of discounts governed by the amount purchased, the largest being 5 per cent. rebate for $30,000. Have you been allowed those rebates? A. No, sir.

Q. On any of these goods which you have purchased 3
from the Standard? A. No.

Q. Are you a large customer of the Standard?

A. Well, not knowing the volume of their business, that is hypothetical.

Q. As jobbing houses go?

A. I should say we were very much above the average as an enamel account.

Q. Your annual purchases of sanitary enameled ware run into the hundreds of thousands?

A. No, run from 60 to 100 thousand dollars a year.

RE-CROSS EXAMINATION BY MR. NOBLE: 4

Q. You hope to get the rebates referred to in the 7th paragraph and 8th paragraph to which counsel for the Government directed your attention and which he read to you, do you not? A. Yes, sir.

Q. Do you expect to get them?

A. If we have to sue for them.

Q. Upon the language or terms read to you by counsel for Government? A. No.

Q. Do you expect to get the rebate for purchasing more than $30,000 worth of goods? A. Yes.

Q. And what percentage of your business approximately is the sanitary enameled iron ware business?

Mr. GROSVENOR: This witness has testified, I think, that his company manufacture some articles.

Mr. NOBLE: That is where you purchase goods from other manufacturers, as compared with the balance of your business.

Mr. GROSVENOR: I suggest that counsel confine himself to his business in plumbing supplies.

Q. Put it this way: What percentage of your business, as a jobber of plumbing supplies, does your sanitary enameled iron ware business amount to, confining your answer to that portion which you purchase from other persons?

A. Oh, from 15 to 20 per cent., I should assume.

RE-REDIRECT EXAMINATION BY Mr. GROSVENOR:

Q. Did Mr. Torrance ever promise you or say to you that his company would pay you these rebates which I have read and which are referred to in Paragraphs 7 and 8 of Government's Exhibit No. 11? A. I cannot recall.

Q. You do not recall that he has said anything?

A. No, I do not.

Q. How do you expect to get them?

A. Well, if we do not get them voluntarily, we will sue for them and collect them by legal means.

Examination concluded and signing of deposition waived by agreement of counsel for the respective parties.

Mr. GROSVENOR: Counsel for Government rests and suggests that we adjourn until January 9, to begin the taking of the testimony for the defendants, and also wishes to state on the record that the Government will expect the Defendants to put in their testimony within the same amount of time that the testimony of the Government was put in the record, and desires to give this notice so that counsel will understand that counsel for Government will oppose any extension of time requested of the Court.

Mr. NOBLE: Counsel for the Defendants, of course, reserves the right of cross examination of the witness

Wayman, as stated in the record of yesterday, and in reply to the notice given by counsel for the Government, desires to state that he will make an examination of the record thus far made by counsel for Government and put in his defense from time to time as speedily as may be possible. Counsel for defense also calls attention of counsel for the Government to the fact that the indictments are pending of which counsel for Government has knowledge, which will require much attention on the part of counsel for defense, so that the notice given must be understood as received with full knowledge on the part of counsel for the Government as to the existing facts. 1 2

Adjourned.

3

4